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LAW ENFORCEMENT ON NATIONAL FORESTS

CALIFORNIA
DISTRICT



UNITED STATES
DEPARTMENT OF AGRICULTURE

FOREST SERVICE, DISTRICT 5

STUART B. SHOW
District Forester



WASHINGTON
GOVERNMENT PRINTING OFFICE

1924

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The following are the revised instructions for law enforcement on the national forests of the California district.

These instructions are supplemental to the National Forest Trespass Manual. Forest officers will be held accountable for familiarity with them and for action resulting from investigations. The education of reliable short-term men in the search for and preservation of clues is also desirable, since guards will often be first at the scene of a trespass, especially fire. This, however, is most effectively done by oral explanation. Only in exceptional cases should guards be given the complete instructions.

DUTIES

GENERAL

Law enforcement is now a primary duty of all forest officers. The special law-enforcement work will be confined mostly to investigation and the working up of its results for use in criminal court actions; but minor cases in justices' courts, or where settlement by payment of cash or damages is made, may have to be conducted by ranges or other investigators.

INVESTIGATION

In fire cases, except lightning fires, and in all other violations of laws or regulations applicable to the national forests and properly subject to investigation, every district ranger, on his own district, will be expected to start an immediate investigation looking toward the detection and prosecution of those responsible for the offense, and to conduct this work with the best energy, knowledge, and skill at his command.

REPORTS

An informal report (oral or written) of the occurrence of the offenses shall be made immediately upon its discovery, or as soon thereafter as communication can be established or the work permits, to the supervisor of the forest for his information. This is especially important because of decisions which the supervisor or district forester may have to make respecting civil or administrative actions. Further, special reports shall also be made as called for by superior officers.

ASSISTANCE

If too many fire or other cases occur for a ranger to handle alone, or if difficult cases develop in which he desires assistance, help should be immediately requested from the supervisor or from the district office.

District rangers will be expected to make every possible effort in this work; but they should not hesitate to call for additional help if they need it. Constantly recurring fires or other offenses will indicate that local action must be stiffened or help requested.

SUPERVISION

Supervisors will be responsible for the attitude of forest officers to law-enforcement work and for its vigorous prosecution on their forests. Inspection and check must be maintained on the investigative work done by each man. Not every man is adapted to this work, and assignments to it should be subject to selection. Investigative work, however, should be judged on its merits; failure to convict must not always be considered the investigator's fault. If a man fails to get the results which it is reasonable to expect, it may be desirable to let him work on a case or two with an experienced man before trying more cases alone, rather than to displace him. He should not ordinarily be given charge of other cases until he has had such coaching.

LINES OF WORK

FIRES

Law enforcement is concerned with man-caused fires. Until fires of unknown origin can be proven otherwise, they must, with respect to enforcement investigation, be viewed as man-caused. At all such fires the ranger has two duties—(1) to see that the fire is put out, and

(2) to see that every possible measure is taken to detect the person responsible.

Investigation must be started immediately, before clues in the vicinity of the fire are obliterated. However, this does not mean that suppression of the fire can be neglected. Careful planning and scheduling of both lines of work will be necessary, first by the supervisor as a forest policy, then by the ranger in charge of each district. Because investigation is new and not well understood by the field men, its direction must be given careful attention by all administrative officers, and fire plans must be so arranged as to permit of pushing both investigation and suppression simultaneously. Short-term men must be assigned with reference to the requirements of investigation and their capacity for the work, and should be instructed as provided on page 25 of this manual.

FISH AND GAME

Regulation T-7 marks the entrance into our national forest policy of a more vigorous attitude toward fish and game. These are now to be recognized as a national asset, which should be conserved on the national forests just as timber or forage is conserved. The Forest Service policy regards as legitimate such use of a resource as is consistent with maintenance of supply, but as illegitimate any use in excess of that requirement. This raises enforcement of the fish and game laws and cooperation with State authorities in such enforcement from a matter of incidental good will to one of direct duty. A more radical change in community sentiment must be wrought to give thoroughgoing game-law enforcement the backing that is now accorded fire-protective measures; but a clear understanding and impartial enforcement of the service policy by every forest officer will go a long way toward securing the desired result.

GRAZING

Enforcement of grazing regulations has suffered in many cases from the same hesitancy in respect to community good will which affected fire-law enforcement prior to the push on the latter in 1918. Stockmen prefer a ranger who is able to give them proper protection and also to make them live up to the requirements of their permits. The fearless and impartial enforcement of grazing regulations may be expected to bring gains

in community esteem and confidence in the ability of forest officers to administer the forests that will be comparable to the advantages which are resulting from fire-law enforcement.

Grazing enforcement must bear upon cattle straying over allotment boundaries as well as upon sheep, and must not overlook violations of the requirements of cattle-salting and sheep-bedding permits. Much of this work is purely administrative and will not come to the law-enforcement investigator. But when grazing trespass is consistently gone after by all forest officers, many unreported cases will probably develop, which may require investigative work. Investigators of grazing trespass must be particularly careful to obtain exact and, if possible, first-hand facts with respect to numbers and ownership of stock in trespass, exact location with respect to boundaries of national forest land, exact terms of permit violated (if any), and all other essential points.

The presence, movement, or transportation of stock or other animals within national forests closed by reason of foot-and-mouth or other contagious or infectious disease of animals, is prohibited by Regulation T-9.

OTHER TRESPASSES

Timber, occupancy, property, and other trespasses on the national forests may require law-enforcement investigation. In timber trespass, however, the facts are usually plain, and action is seldom criminal. Law-enforcement investigation, therefore, will seldom be required unless the identity of the trespasser or the time and manner of committing the trespass are in doubt.

PREVENTION

In all law-enforcement efforts prevention propaganda should not be forgotten. An ounce of prevention is still worth a pound of cure. Every stockman is not to be held an incendiary, nor must such an impression be permitted to arise. Warning should be given, however, that every incendiary will be caught, if possible, and punished; but, at the same time, appreciation of good work done should be conveyed to stockmen and all other cooperators. Friendly relations should be established with campers, in the course of which unobtrusive warnings of the danger of fire and advice on how to avoid it can be extended. This will make friends for the service instead of enemies, and strengthen its position in every way.

AUTHORITY

FEDERAL

Forest officers have authority, derived from Federal statutes, to enforce Federal laws or regulations of the Department of Agriculture within national forests.

The authority to cooperate with other Federal bureaus and the State along certain lines is contained in the act of May 23, 1908 (35 Stat. 251): "And hereafter officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States and Territories with regard to stock, for the prevention and extinguishment of forest fires, and for the protection of fish and game, and, with respect to national forests, shall aid the other Federal bureaus and departments, on request from them, in the performance of the duties imposed on them by law."

STATE

If forest officers have State deputy fire warden and game warden appointments, they possess under the statutes of the State the authority, protection, and privileges of any officer of the State of California. All rangers should be certain that they have deputy State fire warden and fish and game warden appointments. If not, they should make request for them through the supervisor.

Violations of law touching private rights in national forest communities are not ordinarily subject to police action by forest officers; but such officers have the right of any citizen to lay facts before the proper authorities or to advise others how to do so. Action in the latter direction, however, obviously demands caution and judgment. Except in extreme emergency, the case should be reported to the assistant to the solicitor for his review.

ADVICE AND BACKING

When in doubt, especially on legal questions, ask for advice through the supervisor. However, circumstances may sometimes require immediate action, and not permit of delay. When a ranger acts on the best judgment at his command, his actions and recommendations will be backed by the district office. Legal help for conduct of all important court cases will be provided on request.

LAWS AND REGULATIONS AND THEIR APPLICATION

An investigator can not know what he must prove unless he understands what constitutes a crime according to the law in respect to the subject in hand. Where more than one course is possible, he must be able to advise intelligently which action should be taken. He should also have a reasonable degree of familiarity with what is acceptable in court as evidence, how it must be prepared and presented, and just what he can and can not do in dealing with suspects and trespassers. Even though he does not conduct the case in court, the investigator will find this knowledge useful from his interpretation and use of his first clue onward.

FIRE

FEDERAL FIRE LAW

The Federal fire law, act of March 4, 1909 (35 Stat. 1098), is as follows:

SEC. 52. Whoever shall wilfully set on fire, or cause to be set on fire any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SEC. 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

This law thus defines the following offenses:

1. Wilfully setting on fire timber, etc., upon the public domain.
2. Wilfully causing to be set on fire timber, etc., upon the public domain.
3. Leaving a fire or allowing one to burn unattended near any timber or other inflammable material on the public domain. (This does not include any person who is not responsible for the origin of such fire.)
4. Building a fire in or near any forest, etc., upon the public domain and leaving it without totally extinguishing it.

SUPPLEMENTARY FEDERAL STATUTES

Conspiracy.—The act of March 4, 1909 (35 Stat. 1096), defines the offense of conspiracy as follows:

SEC. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

It will be seen that conspiracy involves premeditation, to which more than one person is a party. An

overt act is also necessary to complete the offense of conspiracy, but it is not necessary that the conspiracy be consummated. For example, going on to a national forest to set a fire in accordance with a conspiracy so to do, if this can be proven, is sufficient, even though the conspirators were later frightened away and did not set it. It will be observed that the penalties for the offense of conspiracy may be greater than for a violation of the Federal fire laws, which the conspiracy may have been aimed to commit. Liability for a conspiracy to commit an offense against the United States can not be escaped because the conspirator has actually committed the substantive offense at which the conspiracy aimed. Moreover, all the conspirators to a crime are liable, even though only a part of them participated in its actual commission. The value of the conspiracy law lies in its inclusive sweep as to offenders under its terms and its heavy penalties in the aggravated cases which conspiracy usually involves.

Perjury.—The act of March 4, 1909 (35 Stat. 1111), provides as follows:

SEC. 125. Whoever having taken an oath before a competent tribunal officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, shall wilfully or contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

SEC. 126. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

This statute is often of great usefulness in dealing with a recalcitrant suspect, even though its specific action be not invoked.

FIRE REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

Under the acts of June 4, 1897 (30 Stat. 11), and February 1, 1905 (33 Stat. 628), the Secretary of Agriculture is authorized to make rules and regulations to preserve the national forests from destruction, and any violation of such rules and regulations is punishable by a fine of not more than \$500 or imprisonment for not more than twelve months, or both, as provided for in the act of June 4, 1888 (25 Stat. 166).

Regulation T-1 provides as follows:

Reg. T-1. The following acts are prohibited on lands of the United States within national forests:

(A) Setting on fire or causing to be set on fire any timber, brush, or grass, except as authorized by a forest officer.

(B) Building a camp fire in leaves, rotten wood, or other places where it is likely to spread, or against large or hollow logs or stumps, where it is difficult to extinguish it completely.

(C) Building a camp fire in a dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetable matter has been removed.

(D) Leaving a camp fire without completely extinguishing it.

(E) Building a camp fire on those portions of any national forest which have, with the approval of the district forester, been designated by the respective supervisors thereof without first obtaining a permit from a forest officer.

(F) Using steam engines or steam locomotives in operations on national forest lands, under any timber-sale contract or under any permit, unless they are equipped with such spark arresters as shall be approved by the forest supervisor, or unless oil is used exclusively for fuel.

(G) Disturbing, molesting, interfering with, by intimidation, threats, assault, or otherwise, any person engaged in the protection and preservation of a national forest.

(H) Smoking during periods of fire danger publicly announced by the district forester upon such areas as may be designated by him which may include roads and trails and improved camping grounds but shall not include improved places of habitation.

(I) Going or being upon those portions of the national forests which may be designated by the district forester as areas of fire hazard, except with permit issued by the local forest officer, but no permit shall be required of any actual settler going to or from his home.

It will be seen that, by the penalties above prescribed, offenses under sections 52, 125, and 126 are felonies, while those under section 53 and the departmental regulations are misdemeanors.

(K) Using an automobile not provided with exhaust and muffler equipment in efficient condition on any road over lands of the United States within national forests or on any road acquired or maintained by the Secretary of Agriculture for the protection and administration of the national forests, which shall have been posted by the Secretary of Agriculture as closed to such automobiles.

(L) Carrying a firearm, except by authorized Federal or State officers, upon any portion of any national forest designated by the district forester in time of fire or other public emergency.

(M) The throwing or placing of a burning cigarette, cigar, match, pipe heel, firecracker, or any ignited substance, or the discharge of any kind of fireworks, in any place where it may start a fire.

• FEDERAL JUDICIAL INTERPRETATIONS

The offense of setting fire to timber, etc., on the public domain may be committed, even if the fire is started on adjoining private land. Judge Wellborn, United States District Court for Southern California, in his charge to the jury in the case of the *United States v. Henry Clay* (fire trespass on the Cleveland National Forest) stated as follows:

You are further charged that it is immaterial whether the fire of October 19, 1909, mentioned in this indictment, originated on private land, if it was set wilfully, and if, in the course of nature and in view of all the surroundings, the said fire would reasonably be expected to be com-

municated to the public domain. A man has no lawful right to set fire to his own property, if he has reason to believe or intends that such fire will be communicated to the property of others and destroy it.

With respect to the meaning of the word "wilful" in section 52, above quoted, Judge Whitson's instructions (United States District Court for Colorado) to the jury in the case of *United States v. Fisher* (fire trespass on the Colville National Forest) were as follows:

And, as to the third count, whether he wilfully set on fire or caused to be set on fire the timber, slashings, or grass there growing. It is charged in the third count that the act was maliciously done; but it is not necessary, under the statute, that malice be shown. It is necessary to show that the act must have been wilful; that is, intentional. Not with intent, however, to burn the public domains and destroy property, but purposely built the fire or purposely left it unattended or purposely failed to extinguish it. The purpose does not apply to the result, but to the acts charged; for one wilfully, knowingly doing an act is presumed to intend the consequences which naturally may be expected to flow from such an act.

STATE FIRE LAW

The California State law relating to forest fires (section 384 of the Penal Code as amended by the 1925 session of the legislature) provides as follows:

Any person who shall wilfully or negligently commit any of the acts hereinafter enumerated in this section shall be guilty of a misdemeanor and upon conviction thereof, be punishable by a fine of not less than fifty nor more than five hundred dollars, or imprisonment in the county jail not less than fifteen days nor more than six months, or both such fine and imprisonment, except that in the case of an offense against subsection five of this section the fine imposed may be not less than ten dollars.

1. Setting fire, or causing or procuring fire to be set to any forest, brush or other inflammable vegetation growing on lands not his own, without the permission of the owner of such land; provided, that no person shall be convicted under this section who shall have set, in good faith and with reasonable care, a back fire for the purpose of stopping the progress of a fire then actually burning.

2. Allowing fires to escape from the control of the persons having charge thereof to spread to the lands of any person other than the builder of such fire without using every reasonable and proper precaution to prevent such fire from escaping.

3. Burning brush, stumps, logs, rubbish, fallen timber, fallows, grass or stubble, or blasting with dynamite, powder, or other explosives, or setting off fireworks, whether on his own land or that of another, without taking every proper and reasonable precaution both before the lighting of said fire and at all times thereafter to prevent the escape thereof; provided, that any fire warden may, at his discretion, give a written permit to any person desiring to burn or blast as aforesaid; such permit shall contain such rules and regulations for the building and management of such fires as the State board of forestry may from time to time prescribe; and in any prosecution under this subsection, it shall be prima facie evidence that the defendant has taken proper and reasonable precautions to prevent the escape of such fire, when he shall show that he has received such a permit and has complied with all the rules and regulations therein prescribed.

4. Setting a backfire, or causing such backfire to be set, except under the direct supervision or permission of a State or Federal forest officer

unless it can be established that the setting of such backfire was necessary for the purpose of saving life or valuable property.

5. Throwing or placing any lighted cigarette, cigar, ashes or other flaming or glowing substance, or any substance or thing which may cause a fire, in any place where such lighted cigarette, cigar, match, ashes or other flaming or glowing substance, or other substance or thing, may directly or indirectly start a fire.

6. Throwing from a moving vehicle any lighted cigarette, cigar, ashes or other flaming or glowing substance, or any substance or thing which may cause a fire.

7. Using any logging locomotive, donkey or threshing engine, or any other engine or boiler in or near any forest, brush, grass, grain, or stubble land, unless he shall prove upon the trial, affirmatively, that such engines or boilers used by him were provided with adequate devices to prevent the escape of fire or sparks from smokestacks, ash cans, fire boxes, or other parts, and that he has used every reasonable precaution to prevent the causing of fire thereby.

8. Harvesting grain or causing grain to be harvested by means of a combined harvester, header, or stationary threshing machine, or baling hay by means of a hay press, unless he shall keep at all times in convenient places upon each said combined harvester, header, or stationary threshing machine or hay press, fully equipped and ready for immediate use, two suitable chemical fire extinguishers, approved by the underwriters' laboratories, each of the capacity of not less than two and one-half gallons.

9. Operating or causing to be operated any gas tractor, oil-burning engine, gas-propelled harvesting machine or auto truck in harvesting or moving grain or hay, or moving said tractor, engine, machine, or auto truck in or near any grain or grass lands, unless he shall maintain attached to the exhaust on said gas tractor, oil-burning engine, or gas-propelled harvesting machine an effective spark-arresting and burning carbon-arresting device.

10. Using or operating by any person, corporation or company, between May 15 and October 31 of each year, any steam, gas, or electrically equipped donkey or stationary engine in any woods operation located in any forest or brush land without first clearing away all inflammable material, including snags, from an area of at least one hundred feet in radius about such engine, and without providing all such steam operated engines, including logging locomotives, with an adequate force pump, and not less than two hundred feet of hose of not less than one and one-quarter inches in diameter, and without providing and maintaining at all times, for fire fighting purposes only, a suitable box equipped with at least seven shovels and three axes at each such engine so operated. It is provided, however, that when two or more such engines are being operated within a distance of three hundred feet from each other, that only one such box equipped as above may be maintained: *And provided further*, that the requirements of this section shall not apply to logging operations in the redwood (*Sequoia sempervirens*) region.

11. Refusing or failing to render assistance in combating fires at the summons of any fire warden unless prevented by good and sufficient reasons.

12. Leaving a camp fire burning or unextinguished without some person in attendance, or allowing such fire to spread after being built.

13. The provisions of this section shall not apply to the customary use of fires and of powder blasting in logging operations in the red wood region (*Sequoia sempervirens*) nor setting of fire on lands within any municipal corporation of the State.

The State law thus defines the following offenses:

1. (a) Setting fire to any forest, etc., growing on lands not his own without permission of the owner of such land.

(b) Causing fire to beset to any forest, etc., on lands not his own without permission of the owner.

(c) No person shall be convicted of offenses "a" or "b" who shall have set a back fire in good faith to check a fire already burning.

2. (a) Allowing fires to escape from control to the lands of another person without using every reasonable precaution to prevent such escape.

(b) Allowing fire to spread to the lands of another person.

3. (a) Burning brush, etc., on his own land without taking every reasonable precaution to prevent the escape of fire.

(b) Blasting with dynamite, etc., in forest or brush-covered land, either his own or the property of another, without taking every reasonable precaution to prevent the escape of fire.

(c) Burning permit and compliance with the regulations contained therein shall be prima facie evidence of reasonable and proper precaution to prevent the escape of the fire.

4. Setting a back fire except under supervision or permit of a State or Federal officer unless for the purpose of saving life or property.

5. Throwing or placing a lighted cigarette, etc., or other glowing substance in a place where it may directly or indirectly cause a fire.

6. Throwing a lighted cigarette, etc., or other glowing substance which may cause a fire from a moving vehicle.

7. Subsection 4 puts the burden of proof on any person using any engine or boiler in or near any forest, brush or grass land to show that such engine or boiler was provided with adequate devices to prevent the escape of fire or sparks, and that he has used every reasonable precaution to prevent the causing of fires thereby.

8. The use of grain harvesters, headers, or threshing machines, or hay presses, unless they are equipped with approved fire extinguishers.

9. The operation of gas-propelled tractors, harvesting machines, or auto trucks, or other oil-burning engines, without effective spark and burning carbon-arresting equipment

10. (a) Operating a donkey engine between May 15 and October 31 of each year in any forest or brush land without taking the precautions specified, the redwood region being excepted.

(b) The moving of any such machines or engines in or near any grass or grain land without such equipment.

11. Refusing or failing to render assistance in combating fires at the summons of a fire warden unless prevented by good and sufficient reasons

12. (a) Leaving a fire unextinguished on departing from camp.

(b) Allowing a camp fire to spread after building.

STATE LAW INTERPRETATIONS

A number of successful prosecutions have been made under section 16 of the general laws of 1905, which provides that a person may be punished for burning on his own land at certain seasons except under the supervision of and with the written permission of a State fire warden. The section follows:

SEC. 16. It shall be unlawful between May fifteenth and October thirty-first, for any person or persons to burn brush, stumps, logs, fallen timber, fallows, slash, or grass brush or forest covered land or any other inflammable material or to blast with dynamite, powder, or other explosives, or set off fireworks of any kind in forest, fallows, grass or brush covered land, either their own or the property of another, unless done under a written permit from the State forester or his duly authorized agent, and in strict accordance with the terms of the permit; these restrictions not to apply to the ordinary use of fire or blasts in logging in the redwood region (*Sequoia sempervirens*): *Provided, however*, that no written permission shall be necessary to burn inflammable material in small heaps or piles, where the fire is set on a public road, in door yard premises, corrals, gardens, or plowed fields at a distance not less than 100

feet from any woodland, timber, or brush covered land or field containing dry grass or other inflammable material. Any violation of this section is punishable by a fine of not less than fifty dollars or more than five hundred dollars or imprisonment for not less than thirty days nor more than six months in the county jail of the county in which the crime is committed, or both such fine and imprisonment.

Forest officers have no jurisdiction over fires wholly on Indian reservations; but Indians setting fires or causing fires to be set, whether on reservations or not, which fires spread to national forest lands, are subject to the above laws in respect to these offenses. If it is desired to arrest an Indian on a reservation for such a fire, this should be done through the Indian agent.

It is doubtful if there is statutory authority by which an officer can commandeer property, such as an automobile, along with the personal assistance required by the State fire law, either in pursuing a criminal or fighting fire. Such action, which is common by city police, may get by, but forest officers should not attempt such tactics.

CIVIL LAWS

The civil laws are too voluminous for reproduction here, and their application is too complex to be attempted by a layman. It is of sufficient importance for note here, however, that chapter 264, California Laws of 1905, as amended in 1919, gives to the United States the right, heretofore limited to the State and counties, of recovery in a civil action of double the damages sustained from man-caused fire, if the fire occurred through willfulness, malice, or negligence, but only the actual damage if the fire occurred or escaped accidentally or unavoidably. In either case the full costs incurred in fighting any such fires may also be recovered.

In order to hold for costs or damages, in a civil action, an owner of land on which a fire is burning, in event of the escape or spread of the fire to national forest land, the following things must be observed at the time of the fire:

1. The owner must be notified of the existence of fire on his land, together with its size and degree of danger, and the nature and probable cost of the measures required to combat it.

2. This notification must be in time to give him reasonable opportunity to take the required action before it spreads to national forest land.

3. If he then takes measures which are not adequate, it must be proved, both that they were in fact inadequate, and that he was informed what measures would be adequate and necessary.

4. No action must be taken by the Forest Service to fight such a fire, before it has spread to national forest land, until the owner has commenced action on it, or has had a reasonable time in which to do so.

It should be noted that the above has no reference to criminal prosecutions.

DECIDING ON THE PROPER COURSE OF ACTION

In respect to trespasses there are, in general, the following possible actions:

A. Legal:

1. Criminal.

a. State.

b. Federal.

2. Civil (costs, damages, injunctions, etc.); always Federal so far as concerns national forests.

B. Administrative: Revoking of permits or refusal of new ones, cancellation of priorities or reduction of numbers (in grazing permits), etc.

In cases of willful fires, criminal action is mandatory whenever evidence can be secured sufficient to sustain it, and is usually so in the case of negligent fires originating on the national forests. The effort to secure such evidence is equally mandatory. Criminal action may also be desirable in many other cases.

Whenever substantial damage has resulted to the national forest, however, the desirability of instituting civil suit must be considered; and, if the trespasser is a forest user, whether administrative action shall be taken. In some cases civil or administrative action may be in addition to criminal action, in others an alternative to the latter. Damage suits are only of value when the trespasser has sufficient assets to satisfy a judgment, if obtained. Decision in respect to civil or administrative action lies with the supervisor or district forester.

The trespass investigator must bear these facts in mind and make report on Form 874-20 to the supervisor immediately, or as soon as necessary data can be obtained, in all cases where civil or administrative action may be a possibility, in accordance with the Trespass Manual.

In all cases involving criminal responsibility, however, he must protect his own work by proceeding with

his investigation, pending further instructions, as energetically as if no other action were possible.

Criminal action.—Actions brought under Federal statutes, or regulations of the Department of Agriculture, must be brought in Federal courts, and those under State statutes in State courts.

For example, the offenses of allowing fires to escape from the control of the person having charge, or of allowing fires to spread to the lands of another person without using every reasonable and proper precaution to prevent such escape, should be taken up under the State law, since the Federal law and regulations do not include them.

This restriction would not be true, however, if the fire was willfully set with the purpose of communicating it to other land. When it can be proved that fires set on a national forest were prearranged by two or more persons, prosecution is also possible in the Federal courts on the felony charge of conspiracy, under section 37 of 35 Stat. 1096, cited above. Conspiracy, however, is an exceedingly difficult thing to prove, and the working up of such a case usually requires considerable detective ability.

When an offense is covered by both State law and Federal law or regulation, choice of court may depend either upon which law covers the case best, in view of local circumstances, or the nature of the evidence available, or upon the speed which may be expected in the respective courts, together with the attitude of the officials who would have to be concerned or of public sentiment in the local communities where minor courts would sit and from which juries would be drawn. Especially when a suspect can be brought to plead guilty, the justice's court is usually the quickest and best resort.

Justices' courts have jurisdiction only over crimes punishable by a fine of not over \$500 or imprisonment of not over six months. This, however, covers the maximum penalties provided by section 384 of the State Penal Code.

A crime commenced in one county and finished in another can be prosecuted in either county.

Theoretically, acquittal in a justice's court constitutes no legal bar to a prosecution in a Federal court for the same offense, provided the case is one of which the Federal court can take appropriate cognizance, but in practice Federal authorities are reluctant to prosecute such cases. A serious miscarriage of justice,

leading to an acquittal in the lower court, must be shown before the assistant to the solicitor will recommend further prosecution.

Rewards are offered by Department of Agriculture regulation (see N. F. Manual, Regs. T-2 and T-4) in fire and property trespass cases.

As a summary, then, the State law is limited to misdemeanors, but is usually speedier in action than the Federal. It is necessarily used in cases covered only by it, and is preferable for the less important cases covered by both State and Federal laws, when a plea of guilty can be secured, and in jury actions if official cooperation and favorable community sentiment are reasonably assured. The Federal law is preferable in flagrant cases and where it is desirable to get a case away from adverse local prejudice in order to obtain trial on its merits; and it is necessary for violations of Federal laws or regulations not covered by the State law, for conspiracy cases, and when it is desired to offer reward. A Federal prosecution is much more effective as a future deterrent in aggravated cases, because of greater penalties in case of conviction.

Great care should be taken, however, that the defendant does not get the impression that the investigating officers will allow him to plead guilty to a minor offense in a lower court rather than to take chances with their evidence before a Federal jury.

Action in Federal cases must be under the direction of the assistant to the solicitor, and should have his counsel on all legal difficulties in State cases. All but the clearest justice's court cases will require report on Form 874-20, as provided in the manual, by the ranger or other investigator for decision as to action.

Civil actions.—Civil actions brought by the United States must be in a Federal court, under the direction of the district assistant to the solicitor. When civil action may possibly be in addition to criminal action, the report on Form 874-20 must be especially explicit with respect to the evidence available for criminal action, since criminal action instituted in advance of a civil action for the same offense and resulting in failure is almost certain to kill the chance of success of the civil suit.

In addition to data on damage to the United States, the Form 874-20 report should also give information on the probable possession by the trespasser of assets sufficient to meet a civil judgment, as well as the prob-

able effect of the damage suit in question upon the sentiment of the community. These are points often requiring consideration in connection with such suits.

Administrative action.—Whenever a person responsible for a fire is a forest user, and especially if his guilt is convincingly established in the mind of the investigator, but the nature of the case or of the evidence available is such as to make successful criminal prosecution doubtful, the report on Form 874-20 should present specific recommendations, fully explained, with respect to appropriate administrative action. A similar report should also be made with respect to users who, though not directly responsible for fires, fail to make proper effort to extinguish them in accordance with the terms of their permits, who refuse to fight fire or to give information, or otherwise fail to aid when requested in the prosecution of those responsible for trespasses.

ARSON

Section 447 of the California State Penal Code defines the crime of arson as the willful and malicious burning in the nighttime of an inhabited building in which there is at the time a human being. All other kinds of arson are of the second degree. Both degrees of arson are, however, felonies and are tryable in superior courts.

An inhabited building is any building which is usually occupied by some person at night. To constitute a burning within the meaning of the law it is not necessary that the building be destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

This law applies to the destruction of any ranger station, lookout house, or other inhabited building belonging to the Government. The thorough investigation of such cases should not be left to local authorities as much valuable time may be lost in getting in touch with such officers.

Burning structures, etc., not the subject of arson.—Section 600 of the California State Code is as follows:

Every person who wilfully and maliciously burns any bridge exceeding in value fifty dollars, or any structure, snowshed, vessel, or boat, not the subject of arson, or any tent, or any stack of hay or grain or straw of any kind, or any pile of baled hay or straw, or any pile of potatoes, or beans or vegetables, or produce of fruit of any kind, whether sacked, boxed, or crated, or not, or any growing or standing grain, grass, or tree, or any fence, or any railroad car, lumber, cordwood, railroad ties, telegraph or telephone poles, or shakes, or any tule land or peat ground of the

value of twenty-five dollars or over, not the property of such person, is punishable by imprisonment in the State prison for not less than one year nor more than ten years.

FISH AND GAME

The fish and game laws are too voluminous for reproduction here. Every forest officer must have, as a part of his law-enforcement equipment, a copy of the latest edition of the fish and game laws of the State in which his district lies. The fish and game laws of California, as published in pocket pamphlet form by the State fish and game commission, contain also the Federal laws and regulations relating to migratory birds. Copies can be obtained on request to the district forester.

REGULATIONS

In addition to the preceding, Department of Agriculture Regulation T-7 provides as follows:

Reg. T-7a. The going or being upon any land of the United States, or in or on the waters thereof, within a national forest, with intent to hunt, catch, trap, wilfully disturb or kill any kind of game animal, game or nongame bird, or fish, or to take the eggs or any such bird, in violation of the laws of the State in which such land or waters are situated, is hereby prohibited.

This regulation brings violation of the State fish and game laws into the jurisdiction of the Federal courts, when it is desirable to invoke their action. An important point is that this regulation permits prosecution for intent.

COURSE TO PURSUE

Legal action.—In fish and game violation legal action will be criminal only. Whenever this can be done in cooperation with the State fish and game commission or their wardens effectively, and without excess cost in time and money to the service, it should be done. Their cooperation will often divide the time and cost of the necessary work.

In some cases, however, their men may not be located so that they can promptly undertake specific investigations or prosecutions. Game refuges also present aspects which may require independent action, since it has been ruled by the courts that these refuges must be properly posted and patrolled before action against offenders upon them is possible in the State courts. Action in such cases may be taken, under Regulation T-7, in the Federal court, provided the offender can be caught on Government land, and that fact proved to the court.

GRAZING

REGULATIONS

Grazing trespass is almost wholly governed by Forest Service Regulations T-6 and terms of permit. For convenience the following is reprinted from the National Forest Trespass Manual:

■ The following acts constitute trespass:

■ Allowing stock not exempt from permit to drift and graze on a national forest without permit.

■ Grazing or driving stock not exempt from permit on national forest land without permit.

■ Violation of any of the terms of a grazing or crossing permit.

■ Refusal to remove stock upon instructions from an authorized forest officer when an injury is being done to the national forest by reason of improper handling of the stock.

COURSE OF ACTION

Legal action in grazing cases, whether criminal or civil, falls in the Federal court. Questions of civil or administrative action are especially important in grazing trespass, and the supervisor must be kept in correspondingly close touch with all developments, especially by Form 874-20 report.

The first distinction lies between permitted and nonpermitted stock.

In the case of nonpermitted stock, legal action is the only recourse. If material damage has resulted to the national forest, a civil suit should be brought against the owner. Criminal action can also be instituted if the gravity of the case warrants. If the damage is slight, civil action only should be resorted to. When for any reason neither civil nor criminal action against an owner of trespassing nonpermitted stock seems feasible, and settlement of damages can not be obtained, such settlement should be required as a condition of favorable action if the trespasser applies for a permit in the future. When any grazing trespass involves negligence or knowing participation, on the part of the herder or other person in charge of the stock, criminal action should be brought against him, either with or without action against the owner.

In the case of permitted stock, both legal and administrative action are possible. Double penalty should never be invoked, however, and revocation of permit is usually a greater penalty than any possible damages or fine. The gravity of the offense and the effect of possible actions upon the permittee should always be considered. Only in aggravated cases

should the permit be revoked; in lesser cases where disciplinary measures appear preferable to legal action, reduction or some less severe administrative action than revocation should be chosen. Damage suits should be brought only when the damage is commensurate with the cost of the action, and when the trespasser has sufficient assets so that damages can be recovered. Criminal prosecution should be used more than in the past, especially with respect to herders, provided there is no opening for a just charge of prosecuting subordinates only, when their principals are responsible for the trespass.

Under certain conditions suits can now be brought by the Forest Service for trespass on private land waived under Regulation G-4.

With respect to trespass on mineral return (R. R.) land, the possibility of damage suit is doubtful.

For cases which can not be effectively handled under the former trespass procedure the following regulation was approved February 1, 1925:

REGULATION T-11.—IMPOUNDING OF LIVESTOCK

Domestic livestock found trespassing on national forest land if not removed upon reasonable notice may be impounded by the Forest Service. If the owner of the stock is known, prompt written notice of the impounding will be given him, and unless the stock be removed by the owner within five days from the receipt of such notice the stock shall be sold or otherwise disposed of as hereinafter prescribed. If the owner be not known, notice shall be given by publication for not less than fifteen days in a newspaper of general circulation in the county in which the trespass occurs and concurrently by posting at the county courthouse. In either case the notice shall state when and where the stock was impounded, describe the stock by brands or other means of identification, and specify the time and place it will be sold in default of redemption by the owner. If the stock be not redeemed on or before the date fixed for its sale, it shall be sold at public sale to the highest bidder, or otherwise disposed of. The owner may redeem the stock by submitting proof of ownership and paying all expenses incurred by the United States in advertising, gathering, pasturing, and impounding it. Upon the sale of any stock in accordance with this regulation the forest officer shall issue a certificate of sale. Any stock impounded under this regulation which is offered at public sale and no bid received therefor, may, in the discretion of the forest officer, be sold at private sale or be condemned and destroyed.

TIMBER

On timber trespass, covered by Regulation T-5, see under "Duties," page 1.

OCCUPANCY

REGULATIONS

In occupancy trespass, as covered by Regulation T-8, the provision under which law-enforcement investigation will most often figure is probably clause (B) requiring occupancy, structures, etc., on claims to be "for the actual use, improvement, and development of the claim, consistent with the purposes for which it was initiated." This provision should cause a careful scrutiny of wildcat mining claims and others, which are still in some localities being used as a cover for the enjoyment of uses or benefits not consistent with the purposes for which the claims were initiated.

COURSE OF ACTION

Action in occupancy trespass will be mainly legal, and this almost entirely civil. This will require uniform reference of cases to supervisor and district forester for decision on action to be taken. Civil action may be for injunction, ejectment, cancellation of easements or other rights not legitimately used, or for quieting of title, etc. Legal action will lie in Federal courts only.

Administrative action would figure only collaterally, as in fire cases, but should not be overlooked when the trespasser holds any forest permit.

PROPERTY

LAWS AND REGULATIONS

Property trespass, as provided for by Regulation T-3, covers only defacement, damage, or destruction, etc., to Government property, including notices and signs, or going or being upon national forest land with intent to commit the same. Property offenses which may require law-enforcement investigation and prosecution may include robbery or theft under the Criminal Code, act of March 4, 1919, sections 46 or 47 (35 Stat. 1097), which provide as follows:

Section 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

Section 47. Whoever shall embezzle, steal, or purloin any money property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records of property of the United States, shall be fined

not more than five thousand dollars, or imprisoned not more than five years, or both.

Section 48 of the same statute also provides similar penalties to those of section 47 for knowingly receiving, concealing, etc., Government property stolen as in section 47.

Section 60. Whoever shall willfully or maliciously injure or destroy any of the works, property, or material of any telegraph, telephone, or cable line or system, operated or controlled by the United States, whether constructed or in process of construction, or shall willfully or maliciously interfere in any way with the working or use of any such line or system, or shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such line or system, shall be fined not more than one thousand dollars, or imprisoned not more than three years, or both. (Act of March 4, 1909, 35 Stat. 1099.)

The following acts are prohibited on lands of the United States within a national forest by Regulation T-3:

(a) The willful tearing down or defacing of any notice of the Forest Service.

(b) The going or being upon such lands with intent to destroy, molest, disturb, or injure property used, or acquired for use, by the United States in the administration of the national forests.

(c) Destroying, molesting, disturbing, or injuring property used, or acquired for use, by the United States in the administration of the national forests.

(d) Mutilating, defacing, or destroying objects of natural beauty or of scenic value on such lands.

(e) Damaging and leaving in a damaged condition roads or trails which are under the jurisdiction of the Forest Service.

(f) Entering, occupying, or using without permission from a forest officer, any building of the United States used by the Forest Service in connection with the administration of a national forest, except in case of emergency to prevent suffering.

(g) Leaving any building of the United States used by the Forest Service in connection with the administration of a national forest without placing the same in a condition as sanitary as when entered.

(h) The use of roads maintained by the United States when the use of such roads will cause them to be damaged.

DESTROYING OR TEARING DOWN NOTICES

Section 616 of the California State Penal Code is as follows:

Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from or of any law of the United States or of this State, or any proclamation, advertisement, or notification set up at any place in this State by authority of any law of the United States or of this State or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine of not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

WHEN ANY OFFENSE IS COMMITTED NEAR THE BOUNDARY LINE OF TWO COUNTIES

Section 782 of the California State Penal Code states:

When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

Legal actions in property offenses will be in Federal court, if a Federal law or regulation is involved, and will in most cases be criminal. Civil action for the recovery either of damages or the property itself (replevin) is not precluded, and may be either in addition to criminal prosecution or as an alternative to the latter. But the expediency of damage suits is questionable here more often than in most other trespasses on account of financial irresponsibility of the trespasser.

INVESTIGATION

GENERAL METHODS

Qualifications.—The greater a man's ability the more he can accomplish in this as in any other work. Qualifications peculiarly necessary for an investigator are observation, common sense, industry. Nothing is so small as to be safely overlooked; a whole case may turn on what seems a most unimportant detail. On the other hand, many details are unimportant. The correct judging of importance hinges largely upon the imaginative power to picture constantly in the mind the whole case and its probable development. Beware of letting anything go as unimportant without thus carefully weighing it.

Catching a criminal is a battle of wits; the one who thinks hardest all the time wins. No stone can be left unturned, no reasonable theory left untried. Success in difficult cases requires special aptitude as well as experience. Only by hard work and hard thinking, concentration of every energy on the one issue in hand, and whole-hearted devotion can anyone carry this work to success in spite of discouragements, apparently unsolvable problems, and unfavorable jury decisions when it seemed that the case would not go wrong.

Preliminary information.—Success demands thorough preparation. This includes not only a knowledge of the laws and procedure governing the work, but of the details of all lawless regions, such as topography, trails, and other get-away avenues; of the persons, existing in every community, who know all about the rest of the community, and the cultivation of their good will so that one may turn to them for information when necessary; of the habits, rendezvous, and associates of general community suspects and of their family, business, and other relationships, so that in seeking information from others you may not unwittingly kill your

own case by approaching one of their close sympathizers; and even of the interior arrangements of their houses and residence premises, against the possible necessity of serving search warrants there.

Starting out.—Investigative work, especially in fire cases, demands even greater speed in get-away than does suppression. If footprints lie for days, or even until after the suppression crew has tramped over the ground, before they are investigated, not only may they be obliterated by others but the defense will not be slow to take advantage, in a trial, of the possibility that tracks proved to be those of the defendant could have been made after the offense was committed. The latter danger applies to other trespasses as well as fire. The only safety lies in starting investigation on the ground with all possible speed.

How many men.—Never rush in a mob. Unless something is wrong with the protection organization, even fire suppression should not require sending many men at first. For investigative purposes two will be best, providing for witness and assistance, while reducing the chance of confusion and obliteration of clues. The matter of assistance is specially important in case of arrest, in order to give the investigator some one with whom to leave the arrested person if it should be necessary for the investigator to go elsewhere or to attend to other business.

Equipment.—To get away quickly, the investigator must have his equipment packed and ready beforehand. A notebook is one of the most essential items. Everything must be written down; no detail is too small. This becomes particularly important when the case must be taken up later by a special investigator who has not participated in the initial hunt for clues. Each searcher for clues should also have a map. A United States Geological Survey quadrangle, or a forest recreation map, if accurate, is the most convenient base map on which to keep the general layout.

What to do.—The first man or men at a fire must either take up the hunt for clues or insure that these will not be destroyed until the investigator can get there. They should see that fire fighters are kept from crowding around the fire until the ground has been looked over for evidence, and they must make all fire fighters stop horses and keep off the trails themselves, for at least 100 yards from the origin of the fire. Require men in charge of fire fighting to keep eyes open for clues and to note people met on trails, with

time of meeting, especially outsiders first on the scene of a fire; to keep ears open for boastful or antagonistic remarks of fire fighters, who may themselves have set the fire or know who did; and to report anything learned at once to the district ranger or other investigator.

SEARCHING FOR CLUES

What are clues?—No deed is done without leaving clues; the only question is the investigator's ability to find them. A no-clue case means only that he was not up to the scratch in finding them.

Anything is a clue which has any connection with the offense or its author. Tracks, camp-fire or lunch remains, "plant" used to set off a fire, blanket or other threads pulled off by brush or trees, hairs, scraps of paper or other things carelessly or unintentionally left by the offender, etc., are examples. A good working rule is that everything is to be held as a clue which can not be accounted for without reference to the offense. While all things unaccounted for are clues, they do not become evidence until their connection with the action of the suspect is clearly shown.

Some things, such as tracks, the forest officer can interpret better than any outside expert—in other words, he is himself the best expert. Other things can only be interpreted by those with special training; for example, the microscopist, the chemist, or other specialist. Not even the smallest thing is unimportant until it is certain that it has no useful connection with the case.

The working theory.—To guide the investigator in the interpretation of clues or evidence two things are necessary: (1) Every bit of knowledge he can gather before leaving for the scene or on the way, as to the offense, including its occurrence, surrounding circumstances, and probable author and motive; (2) the building of a mental picture or reconstruction of all that he knows of the case. This must be constantly building and constantly revised. Nothing else will prevent wandering, loss of time, and possible failure. At the start it may consist only of a "hunch" as to who set the fire or where to look for clues; but every new thing found will contribute to it. This mental reconstruction or theory of the case is the indispensable bridge by which to cross from the initial clue to the completion of the case.

How to search.—On arriving at the scene first locate the critical point; for example, the origin of a fire. If the point of origin is not evident, beware of jumping to conclusions; the incendiary or other criminal does not do the obvious thing if he has sense. Then examine minutely the immediate area. System is absolutely necessary in this search. Go carefully around the point of investigation, widening the circles each time, but keeping them close enough together (say 3 feet apart at first) to make sure that every foot of ground is minutely examined. Drop markers to show where each circle ends.

Notebook record.—Record must be kept of everything found and done, and of all conversations held or information learned. Court proof can depend on nothing less than definite written record. Describe everything found, and record items in the definite order in which they occur. The time of every occurrence or find, and of every notebook entry, should be recorded. Also be sure to get from suppression foreman, or other sources, the exact time fire was started, discovered, fighting commenced, etc., time persons were met on trails, and all other significant circumstances. The time record is essential, and it will be sure to fall down unless all concerned cultivate a look-at-the-watch habit.

The notebook record must contain everything. It must also be in orderly enough form for immediate use. For both these reasons it is essential that the recording of notes keeps pace with the discovery of clues. This takes time; but end-of-day writing-up will not work and can not be tolerated on this job.

Map record.—An accurate map is the best means of showing many of the facts of trespass for the trespass report or in court, and is necessary in every case. The field draft of this map can be prepared on the ordinary map forms.

Look over the map when made, to be sure it is complete. Especially in maps of a man's trail, as well as of streams, be sure to indicate direction of movement by arrows.

Handling evidence material.—Do not touch any objects found which will figure as clues or evidence until they have been accurately described and, if possible, photographed in place. Then pick them up and see if there is anything further to be described which was not evident in place; but pick up nothing which might have been handled by the offender, *except* by the edges

or corners. This is imperative because of possible fingerprint evidence, which the investigator's fingerprint might obliterate. A good suggestion is to handle such material only with gloves kept carefully cleaned by gasoline.

When anything is found, ask yourself at once: What will be necessary to establish the identity and authenticity of this if needed as evidence in Court? Collateral, support or corroboration of evidence may be necessary; a witness to its finding is also invaluable. By getting everything required at the same time, you will be saved the annoyance of a second trip. In any case the finder must put on every object found a private mark, in a hidden or inconspicuous place, by which he can himself identify it in court as the identical object found. This, together with the notebook record of the circumstances of finding, in chronological order, is the best safeguard against an intimation by a shrewd defense attorney, to the possibly serious prejudice of a jury, that evidence has been "planted" by the prosecution.

All objects which it may be desired to use as evidence should be guarded with the utmost care, to avoid possibility of loss, or their purloining by the defendant or his sympathizers. The district ranger, or special investigator, should take personal charge of all such articles, unless it be convenient to turn them over to the custody of a United States marshal or a sheriff. In the latter case, the forest officer so turning them over must, of course, take a receipt, and so note them in his notebook record that they will not be overlooked in working up his material for the case. This care in having such objects under continuous and responsible custody is also a safeguard against suspicion of "planting."

THE PLAN OF CAMPAIGN

The case to be built up must be:

- (1) True.
- (2) Complete.
- (3) Proved by evidence which will stand in court and convince a jury.

(1) The true case starts with a few facts and a tentative theory based upon them and upon best surmises. Whenever new clues or facts are found, ask yourself (a) What instructions, if any, are there in respect to a situation like this? (b) What does this act mean? (c) On the basis of facts to date, if I were the criminal, what would I do next? Sit down and smoke a pipe over it, if that

will help. There is no time to be wasted, but right interpretation of facts and right action respecting them are so essential that the time necessary to insure these will yield bigger dividends than undue haste. Moreover, most of us find general instructions so difficult to apply to concrete cases that it requires specific and conscious effort; but to do it is a constant necessity until one becomes very familiar with the instructions. Most of the past failures in law enforcement have been on points directly covered by unheeded instructions. No instructions are beyond improvement; but every investigator will be held responsible for following them, unless other action is proved better by actual results.

With respect to the working theory, the simplest one which will explain the facts is always preferable; but the theory is never complete until the case is closed. At all times, but especially at first, when the theory is based on few facts, it must be lightly held, subject to modification at any time by what shall be discovered next, regardless of whether the new evidence agrees with the previous theory or not.

Such open-mindedness, viewing every new fact on its own merits, is harder to maintain than many people suppose, and requires constant and definite effort. It is extraordinarily easy to overvalue new facts which coincide with the theory already built, and to undervalue those which do not. Nothing is more fatal to success or more common among inexperienced investigators than a preconceived theory which its holder will not change when evidence contrary to it appears. Therefore it is necessary every little while to review one's theory systematically in the light of all facts. Especially beware of believing that any given man could not have set the fire—believe your evidence; in investigation reverse the legal rule and believe anybody guilty he until is proved innocent. Beware of thinking the criminal could not have made so big a blunder, when such apparently develops—he usually does blunder somewhere, otherwise he would never be caught.

In building a sound theory there are four steps:

(a) Clearly define the problem. This may not be what it first appears; be sure you know what the difficulty is.

(b) Cast about for possible solutions—not only the first one which occurs to you, but as many as you can figure out; then compare their merits and select the most probable one.

(c) Reason out the developments of this idea to its logical conclusion.

(d) Constantly test your theory by searching for further evidence or by experiment. Keep your eyes open for evidence indicating some other theory as more probable and give honest weight to it.

(2) *The complete case.*—To be complete, the case must answer the following questions: (a) What was the offense? (b) Where was it committed? (c) When was it committed? (d) How was it accomplished? (e) Who did it? (f) Why did he do it?

Memorize these six words: *what, where, when, how, who, why*, and frequently test by them the completeness of both your theory and the facts so far actually established. This will be one of the greatest helps in planning what remains to be done.

(3) *The case which will stand in court.*—Proof which will convince a jury “beyond a reasonable doubt,” and which is necessary for a criminal trial, is much more difficult to establish than a case which will satisfy the investigator. Individual judgments take much knowledge for granted, but a court must, generally speaking, have actual proof of every material point. If you hear a shot, for example, and on going in the direction of the sound find a man standing over a dead doe, you will not be long in reaching a conclusion. But if you arrest him while he is only looking at the deer, you are liable to lose your case in court. You might possibly be able to find some one who saw him shoot and the doe fall. If he takes possession, however, you have him on that count, whether you can prove that he killed it or not. Whenever a fact is found which points to a material conclusion, ask yourself: (a) Does this sufficiently prove the conclusion? (b) What else, if anything, will be necessary to establish or corroborate it in court?

A jury will be convinced only by a *complete* chain of circumstantial evidence, both as to facts and the proof that they are facts. Constantly review this chain while following clues, to be sure no link is omitted. Also bear in mind that any one chain may be broken somewhere by the defense; therefore build all the lines of evidence possible to your conclusion.

SPECIAL CLUES

Tracks.—Tracks are among the most important clues. If a fire is set or other offense committed by human agency, a man walks or rides there to do it. He may

cover up his tracks in the immediate vicinity of the offense, or they may be burned over or obliterated by others. Farther away from the fire he will settle down to normal gait. If no tracks are found at or near the origin, it will be necessary to widen out. This wider search should begin at the most likely point; but until the tracks are found the search should be conducted on a rigid system, so that no area will be overlooked. If it is possible to get wind of the present whereabouts of the suspect, the investigator should of course cut away and get him, leaving assistants to connect up the complete trail for use as evidence, or postponing this until the suspect is disposed of. For the man who has gone in pursuit of the suspect it saves time and is usually just as effective to take up the completing of the trail backward from the point where the suspect is taken to the point where it was previously left.

Identification of tracks.—Study of details is essential; dimensions and shape of imprint, nails (present and missing), seams, creases, cracks, or other distinctive marks; wear, repairs; age of track, methods of putting down the foot (twist as foot strikes the ground, etc.), angle of feet (toes out, straight ahead, or in), and differences between the feet in this angle, if any; barefoot, smooth, or roughshod horse tracks, specially shaped or weighted shoes, and gait of animal (as trot or pace).

Age of track.—This is shown by sharpness of impression, by moisture and color, whether leaves and dirt lumps have fallen into it, or tracks of insects, birds, etc., or other man-caused tracks, have crossed it, and by the condition of broken green twigs, etc. A trail made at night is often known by the way it bumps into or makes detours around obstacles. Whether a horse was ridden or led may sometimes be shown by the trail passing under or around low-hanging limbs.

Other indications.—Speed may be approximately shown by degree of slide at heel, depth of heel edge and toe edge, length of drag of toe, and distance between tracks. The class of person or animal can sometimes be deduced from tracks (high-heeled vaquero boots, new or pointed toe city man's shoes, horsehoes *v.* mule shoes, etc.); also whether drunk or sober; carrying burden or free (feet wider apart, steps shorter and more unsteady with burden); and existence of bodily defects (step is shorter on lame leg, injured knee, or hip twists, foot tracks, etc.). A confidential talk with the local shoemaker or blacksmith, if there is one, will

often throw light on the ownership of shoes which make a peculiar track.

Following tracks.—This requires skill and experience. Points sometimes overlooked are the following: In dry pine needles breakage or minute differences in color are often discernible on hands and knees, though the needles have sprung back to position and no trace is visible while standing. Tracks in dry grass also require extremely close attention. Barring wind, grass will usually hold what impression is made until the coming of night dew, fog, or rain. Through brush a trail can be followed by broken or skinned twigs near the ground when it is invisible on the ground itself. When the trail is broken or lost, circle ahead in the probable direction of the trail; stakes set by tracks found will help to line up the course.

Comparing tracks.—To convince a jury, it is necessary to identify tracks found with known tracks of the suspect. A track may be compared with a foot or shoe for identifying marks, but in respect to dimensions it is better to compare tracks, and also moving tracks with moving tracks, since tracks made in soft earth, especially at high speed, are always shorter than the foot making them because of the push toward center at heel and toe.

Getting check tracks for comparison is often ticklish business. An innocent man should not object to letting his track be measured, but he may take offense at the suspicion. Tact should be exercised not to antagonize innocent persons, although no one can be assumed to be innocent. If the evidence points to guilt, the tracks must be obtained. This is sometimes possible by indirection. In the case of human tracks, get the suspect to come outside on some pretext and lead him across ground where he will leave a good track, which can be measured afterwards. Horses' tracks may be measured in the same way. If the owner objects, use a search warrant.

Auto tracks.—How to tell the travel direction of autos puzzles many investigators. On earth roads the following are indicators: Pattern imprint of nonskid tires, which is steeper and more distinct on the rear side of each indentation; stones which are shoved ahead by wheels, the track of the stone usually being intact close behind where it stops, and dust being piled by the shove on the forward side; imprint of partly imbedded stones slightly displaced by the wheels, the displacement being backward in very small stones and forward

(or both forward and then backward) in those large enough to receive lateral as well as downward pressure; a sprinkling of sand or dust, which is found on the rear side of stones or other obstructions passed over by the wheel, while the forward side is usually swept clean; direction of skid on side slopes or against angling rocks or water breaks; the jump (when speed is sufficient) off the forward side of such obstructions, or in dropping into chuck holes; impact (wider tire imprint) on the forward side of shuck holes or against obstructions; action in ruts, where, in dropping in, a wheel will run off the high side to a featheredge, while in climbing out it will stay in the rut until side pressure forces it to climb out abruptly; the direction in which water drops, or mud, are carried out of a mudhole, or a steam ford; traction slips, which occur in going up steep grades; the turn on curves, which is usually more abrupt on leaving than on entering a curve; the deeper impression due to standing, at stops in soft soil, the impression being more pronounced at its rear side; the Y where a machine backs out from a roadside stop. Even if no one sign is conclusive, the sum of those gathered by following the track closely for some distance will in most cases lead to a sure conclusion.

Excessive speed will almost always be disclosed by wind-whirl disturbances of the track, the distance of side throw of sand, mud, or water, side lurch on rough road, and the length of wheel jump in passing over obstacles. The size of car is approximately indicated by the width of tire tread, although this is affected by the amount of load, as well as by the air pressure in the tires. When the load is heavy, there is a higher piling up of the dust ridge which is left in the center of the wheel track by the suction and thrust of traction on pneumatic tires.

Proficiency in tracking.—Whether of men, animals, or autos, proficiency in tracking can be gained only by actual practice, and plenty of it. While trackers can not be made from books, one tracker can often tell another new kinks, and all can learn more by study. Let every man keep his eyes open and send in for the benefit of all the new things which he learns or clues familiar to him but not mentioned here.

Moreover, many who know are not able to explain clearly how they know, and the discussion in these instructions will help them in such explanation. The importance of this must not be overlooked; in court this question will surely be raised, and the opposing attorney

will discredit testimony that does not answer it. "You must not only know that you know, but also know *how* you know."

Record of tracks.—The original track, or a cast or replica of it, is the most convincing evidence.

The original footprint can often be solidified sufficiently by means of water glass to be dug out and preserved. This is specially useful in sand or sandy soils. If the soil containing the print is firm enough not to be displaced by it, the water glass can be poured directly into the print. If not, dig a shallow trench, a couple of inches wide and deep, around the print and several inches distant from it, and flow the water glass into the trench, until it has been soaked up by the soil so that it shows on the surface of the print. Then let it stand for a day. The print can not be pried out, but must be carefully freed by digging the soil away from around and under it. It must also be handled with much care thereafter, and this reduces the value of the method when conditions, such as transportation, are not favorable.

In this and many other cases a more desirable method is to make a cast of the track with plaster of Paris, or neat Portland cement. Plaster of Paris sets more quickly. The builder's finish plaster is seldom good enough. Cement is often more available to a forest officer. From the cast a replica of the track can then be made, or not, as desired.

When the soil composing the print is firm enough, the plaster or cement can be wet mixed by stirring carefully into water (sifting it in preferably, to avoid lumps) to the consistency of thick cream, and flowed directly into the impression, either by pouring, or, if greater care is desirable, from a spoon. Pure plaster of Paris sets in about five minutes and, therefore, requires rapid work; its setting can be retarded, however, if desired, by adding a little vinegar. When about one-half inch depth has been flowed in, reinforce the cast by laying in it, crossed at right angles, several thin water-soaked strips of wood. In the absence of these, small green twigs, or even stout string, will help. After adding another one-half inch of plaster the cast can again be reinforced, if desired. This is hardly necessary with cement. The finished cast should be at least one inch thick. If this is greater than the depth of the track, a wooden box or earthen dam can be built around the track to hold the liquid.

In dry sand, ashes, or dust a cast can be secured by sifting in very carefully dry plaster of Paris, then sprinkling water slowly on to the plaster until it has become moistened thoroughly. When a one-quarter inch layer of cast has thus been set the remaining thickness may be built up by alternately dripping in dry plaster and moistening with water until the cast is thick enough to withstand rough handling. This is the only method of cast making used by the more experienced investigators.

Little of value is in print on the preceding methods of recording footprints. A large part of the above has been determined by original experiments, and quite as much that is new can be learned in almost any line of this work by anyone who will experiment for himself. It is hoped that many law-enforcement men will try experiments in some line of the work and report results for the benefit of all.

If it is not feasible to secure the footprint itself or a cast of it, the best remaining method is to photograph the track. The camera lens must be exactly parallel to the surface photographed, to avoid distortion of perspective. This can be done most conveniently by the aid of a clamp for attaching a camera to a board or other similar support at any required angle. For use in court the photograph can be enlarged to the exact size of the original tracks. If in photographing, however, a rule is placed alongside the footprint, the scale of measurement will appear in the photograph itself, regardless of the size of the latter.

If not better method is available, draw an exact diagram of the track, on cross section paper if possible. For measurements use two lines at right angles through important detail points of the track, and parallel to cross section lines. The perpendicular distances from any point to these respective lines will then fix its position absolutely.

Fingerprints.—Few persons are acquainted with the value of fingerprints as evidence. They are very valuable where they can be obtained, give absolute identification, and are easy to use. They are produced by the oily impression of the minute ridges on the surface of the skin, and are left even when hands are clean, although very faint when the skin is dry or immediately after washing it with soap. Fingerprints may be found on anything a man handles which has a smooth enough surface, such as papers, cans, bottles, and drinking glasses, if they have not been obliterated by subse-

quent handling; and they can be made visible by appropriate treatment at any time within several hours after they are made, but the sooner the better.

How to manipulate.—Sprinkle a powder of contrasting color on the surface containing prints. Distribute by tapping from a camel's-hair brush or by patting with such a brush (not rubbing) or by agitation on the desired surface. Blow off the excess. Where the skin ridges touched the surface the powder will remain. Powders used by police officers are aluminum (preferably 10,000 fine) and bronze, one or the other of these forming sufficient contrast with almost any color. With expert manipulation these give the best results. Dragon's-blood powder for light surfaces and talcum powder or gray chalk for dark seem to work better, however, for those not expert in manipulation. All of them can usually be obtained at drug stores. When these are not available, powdered charcoal, or *very fine* pencil scrapings, answer for light surfaces; borax, even flour, for dark surfaces. All powders must be dry, since they pile up and work badly if damp.

Prints thus developed are easily smudged by friction. They can be set by spraying lightly with a solution of one part white shellac (prepared floor shellac, not solid gum) in four parts wood alcohol. Dragon's-blood powder, however, can be set without the use of shellac by heating slightly with a match flame after application to the desired surface.

On a large surface, when it is not known where the fingerprints may develop, they can be brought out in a brown color by heating the paper or other surface in a closed box with iodine crystals; the prints can then be recorded by one of the above powders, the iodine color vanishing after a time.

Identification.—The pattern of the skin ridges is different for every individual, and for all 10 fingers of every individual. The lines fall into classes such as arches, loops, and whorls, which have been minutely classified for police records; but nothing is necessary for identification except a close examination and comparison, which anyone can make. This is more easily done with a hand lens, which is an extremely valuable aid to an investigator. The barrel type is best and can be obtained on official requisition. For use in court, photographic enlargements of fingerprints are desirable, so that all the jury can see the same print at the same time. Prints submitted to the district office will be enlarged on request.

Until a man is arrested he can not be compelled to submit to having his fingerprints made. His known prints for comparison with those found in connection with a crime must be obtained by getting him to handle some paper on another pretext. If the paper has type-written matter on it, this may obscure a thumb print; but the fingerprints will be on the reverse. Such paper must, of course, be free from previous finger marks. It should therefore be drawn from inside a new pile, and be handled only by the corners, and between the first and second fingers, as the sides of the fingers leave little mark; better still, use cleaned gloves. When prints can be compelled, as from a man under arrest, they should be taken by pressing the finger on a stamp-ink pad and then on paper. Prints should be taken for all 10 fingers and thumbs. However obtained, each print must be labeled as to finger and hand, since comparison is fruitless unless it is certain that the prints are of identical fingers. Skill in both making and identifying prints requires practice. It is well to acquire such skill before important results depend on the work.

RESTORING MUTILATED PAPERS

Piecing torn paper together.—First hunt for corner pieces, then edges, then work up the interior. Paste on a transparent medium, such as tracing linen—the back may be important—or lay between clean glass plates bound together.

If writing on paper is not in copying ink or indelible pencil, the paper can be moistened by spray from an atomizer or by holding in steam from a tea kettle. This helps to straighten it out if badly curled or bent.

Dim writing comes out plainly in a photograph.

Worn or fragile papers can be made indestructable for handling by dipping into a solution of one part stearine in three parts collodion, and letting them dry 15 minutes.

Restoring burnt paper.—Writing is usually still legible. If not entirely reduced to ash, burnt paper can generally be used; but it is very fragile. Lift by passing another paper beneath. Moisten as above, to remove curl. Slide on to a piece of gummed tracing cloth and very carefully press down. Trim the tracing cloth to exact edges of paper, then piece together as in the case of torn papers. Burned papers are very fragile, even

when gummed. The whole process requires skill. Better practice in advance.

Taking impressions.—Relief impressions of raised surfaces can be taken by using moist blotting paper and letting it dry in position. Impressions of more uneven, or solid objects may be obtained by a similar, use of a mass of wet tissue paper.

PRESERVING PERISHABLE EVIDENCE

Perishable evidence is often best preserved by placing it in cold storage. It can often be preserved, also, in alcohol. In the absence of cold storage, formalin or formaldehyde is best for fish or game meat. These preservatives destroy color, however. If this is important, wire the district forester for advice, stating color and exact nature of material. If it is impossible to preserve any article or evidence, be sure to have witnesses to its finding, and its nature or identity, while it is yet in its original condition.

MAKING USE OF EXPERTS

To the layman one of the most striking services of the expert is that of the microscopist, who deals with a world invisible to the naked eye. He can tell from a hair, for example, whether it is from deer or beef, horse, dog, or human, and the race, habits, and probable age of an original human possessor; from carpet-sweeping dust the number, age, character, habits, food, and recent occupation of, as well as visitors recently entertained by the occupants of the room from which taken; from finger-nail deposits the food, occupation, habits, and whereabouts of the person from whom they were taken, for a week or so prior to that time; and often substantially the same information from a shred of clothing, or even from knives or other articles much handled by him. The microscopist can identify beyond question deer or other game meat or blood, as against beef, chicken, etc., and often such things as soil on a boot as being the same as that taken from the locality of a fire or other offense, hair on a blanket as that from a particular horse, or human hair as that from a certain suspect.

The microscopist, chemist, or other scientiest, however, is not the only expert who can serve us. The dentist (as to teeth marks, etc.), the shoemaker, the blacksmith, the locksmith, the printer or other paper expert, the observant clothing or dry-goods merchant,

or any other man who works in some special line can often tell us more than we can see ourselves respecting some clue relating to their specialty. The investigator must be constantly on the lookout for chances to make use of such help. Anything requiring expert help of a kind not locally available should be submitted to the district forester or the matthe taken up with him, unless it is possible to get quicker help, as, for example, in the case of fingerprints, from the experts of the police department of some near-by city.

It should also be borne in mind that expert testimony which is usually in the nature of opinion rather than fact, must be given by the expert responsible for it and not by proxy, and arrangements should be anticipated for his attendance at court.

ORAL AND DOCUMENTARY EVIDENCE

Material clues or objects of evidence will seldom or never be all that is necessary to prove a case. If no material clues can be found, the only recourse is to investigate until some person or persons can be discovered who know something about the offense and the offender. This takes time, patience, and skill, often more than the administrative ranger feels he can spare, but it must be done. Sometimes, however, he can not do it because the whole community knows him, and the guilty ones and all their sympathizers would soon know what he was after. In such cases a special man, whom nobody knows, will probably have better luck, and the assignment of such a man may be requested.

GETTING A LEAD

In deciding to whom to go for possible evidence the best guide is again a carefully built-up mental picture of the case—a working theory.

If possibilities permit, eliminate at once the busybodies who always claim to know all about every happening, and go after those who really know most or were first on the ground. If nothing better develops, figure out a tentative suspect on some ground, such as most probable motive, and start on that basis. If your tentative suspect should not be the right one, questions implicating him are likely to draw from an honest witness indications as to the true suspect when he would not have given them in reply to general questions.

Before doing this, however, it will be desirable to get preliminary information as a protection against witnesses lying or otherwise trying to mislead. It is indispensable, as soon as any real line-up begins to appear, to consider every scrap of information which is at hand or can be gleaned with respect to family, business, or friendship relations of possible suspects, so as to safeguard giving away anything unwittingly. Use every opportunity to get from fair-minded witnesses information on the trustworthiness and connections of other who must be dealt with.

HELPS TO INTERROGATION

Knowledge of men.—In this work, nothing else can make up for a knowledge of men. A witness will tell nothing or make but inaccurate and unimportant statements to an investigating officer who lacks shrewdness and tact, while the very same witness will make precise, true, and important statements to an officer who can read and knows how to handle him.

Witnesses can be grouped broadly into two classes, those who will tell the truth, and those who probably, or certainly, will not. This resolves itself chiefly into a question of motive. Persons having no interest in the offense or the offender will generally tell the truth; the testimony of those who have such an interest is apt to be prejudiced. However, it should not be overlooked that persons of the latter class may be upright enough to tell the truth if questioned, while fear of unknown consequences may swerve a disinterested witness from the path of truth.

Truthful witnesses may again be divided into those who are willing to tell what they know and those who are reluctant to do so. Most people are of the latter kind. The average American not only has an exaggerated unwillingness to testify against a wrongdoer, but is himself so busy that he does not want to get mixed up in other peoples' troubles if he can avoid it. The person who is anxious to tell on another has usually some grudge, and the influence of this on his testimony must be carefully weighed.

You can help your own judgment of men by systematic study, in your everyday business, of truthfulness, the motives of untruthfulness, etc. A careful study of cases where you believed and were mistaken will reduce your own credulity. Lack of truthfulness

is very common, and a man who fails to state the exact truth is not always in league with crime.

Study of previous testimony of a lying witness helps. A man nearly always sticks to the same lines of mental side stepping in such things as justification of his own conduct, and throwing suspicion on others.

Attitude of officer.—Much of the success to be gained depends upon the investigator's attitude. Judge your man. Be short, snappy, commanding with the bold; patient and considerate with the timid. Unnecessary officiousness, or insolence, or contempt, however, will shut up most men like a clam. Courteous and considerate treatment will open a man's heart—and probably his mouth—especially if others have just treated him harshly.

WHO SHOULD DO THE INTERVIEWING

The same investigator should ordinarily handle all the main issues of a given case. This applies especially to the principal interviews. After a case once takes shape, success depends so much upon a comprehensive knowledge of everything previously developed that important issues can not safely be divided.

INTERVIEWING TRUTHFUL WITNESSES

Getting the witness to talk.—Few witnesses are anxious to talk to an investigative officer. Getting a man to the point where he will talk freely can often be accomplished more easily by directing the conversation along lines in which he is personally interested, even though at first this has no connection with what you want him to talk about. If he still does not tell what you believe he knows, it may be that he fears you want to mix him up in the crime. Such a suspicion should be guarded against, when unfounded. Antagonism can be often avoided stating to the witness that you have been requested by headquarters, or are required by regulations, etc., to get the facts in this case, and will greatly appreciate it if he can tell you anything about it—thus putting it on the basis of routine duty, and dispelling any suspicion that you want to implicate him. If the reluctance is due to fear of the suspect, or desire to avoid the notoriety or loss of time incident to court testimony, and can not be overcome in any other way, say to him that, if he will tell you what he knows, you will only use it as a clue, without divulging its origin; but that, if he will

not, he will have to go on the stand and tell it in front of the defendant. The use of good evidence in whatever way seems best should not be hindered by such a promise unless absolutely necessary; but information obtained in the way indicated may be extremely valuable, and "half a loaf is better than none."

Getting the story.—There are two considerations—(1) to get as complete a statement from the witness as possible—be sure nothing essential is omitted, but do not let him ramble aimlessly; (2) to be sure he is telling the truth. The latter may not follow, as a matter of course, even with willingness on his part.

The best safeguard is a clear mental picture of the case which shows what it is necessary to get, and thus prevents the omission of important items. The six watchwords of a complete case are again valuable reminders.

The method to be used depends much upon the witness. Unless he wanders beyond forbearance, it is best to let him tell his story straight through in his own way. Then question and requestion until it is certain that he can not or will not add anything more of value. Take sufficient time, no matter how much of a hurry you are in. Better not start the interview in the first place than be in too much of a hurry to permit of getting the facts.

Write the story all down as it is told, unless the witness shies at that, in which case do it at the completion of the interview. Opposition to having a statement written down may often be allayed by saying, "Now, I'd like to put this down, so that I can include it in my report, and I will not quote you incorrectly." If rightly handled, he will doubtless help you to get it all straight and can then hardly refuse to sign it. A much more complete and satisfactory statement will ordinarily be obtained by thus writing it yourself than by letting the witness write it.

Read to the witness what you have written, word for word; ask him if it is correct; change any items which he may desire corrected; have him sign it, and have his signature properly witnessed.

In case a witness refuses to make or to sign a written statement but will talk, get him to tell his story in the presence of several reliable witnesses and afterwards write down the essential substance, as nearly verbatim as possible, of his statements, either yourself or in collaboration with the others, who will swear to it in court.

In addition to the record of what was said, put down in your notebook the circumstances of the conversation, persons, witnesses, time, and also all the conclusions for future guidance which you can draw from the facts thus learned.

Some men can not be induced to make a statement, but say that if they are put on the stand they will tell the truth. If their resolution not to talk can not be shaken, the only thing to do is to get as good an idea as possible of what they can testify about.

Legal bearings.—Verbal statements are greatly strengthened by corroboration. As a general rule, testimony by another as to conversations can be used in court only to impeach a witness or, under proper circumstances, to establish an implied admission by the accused when it appears that such conversations occurred in his presence and hearing.

Unintentional offenders.—The general methods indicated for truthful witnesses apply largely to this class of trespassers, such, for example, as those who thoughtlessly leave camp fires burning. Courteous treatment and an evident purpose to do only one's duty, with regret for the inconvenience necessarily inflicted, will often induce confession. If more is necessary to achieve this result, it should be remembered that every man has a weakness through which he can be approached, or through which his defense can be battered down. It may be a hobby, such as horses, automobiles, guns, or some sport, or politics, religion, reputation, even home or mother. Whatever it is, the officer is justified in using it to get to the truth when men have violated the law and are attempting to conceal the truth.

Only if the offense has shown criminal disregard of known danger, or if the unintentional offender becomes hostile or defiant, is anything usually gained by using the more drastic means discussed under "Hostile and lying witnesses." The man who has set a fire unconsciously is an unprofitable man to interrogate because he has no guilty conscience.

If an offender is found on whom you have sufficient evidence, and he objects to being taken before a magistrate, a good expedient is to ask him if he is guilty; if he denies, then he has no valid ground for objection.

INACCURACY IN TESTIMONY

Causes of inaccuracy.—When a man is willing to tell the truth, untrue statements may result from the following causes:

(a) Poor observation. A man may see only part of a total action and have a very inadequate or mistaken notion of the whole; a man sometimes sees what he expects to see; people often hear imperfectly or mistakenly.

(b) Poor comprehension and reasoning. Inference is a part of every mental operation. When we see a clock face, we take it for granted that a clock is behind it, but this is not necessarily true; a tenderfoot thinks mountains are much nearer than they are, because he infers the distance which the given appearance implies in low country; illiterate people distort long sentences, and piece out by inference to a twisted meaning.

(c) Poor memory. This is very common. Beware of a person who claims to remember everything; his testimony is usually open to suspicion. Memory can be helped by talking of the event in question, often as to unimportant incidents, or of a man's occupation connected with the thing to be remembered. But give him time; do not hurry. Do not press an emotional witness too far; there is real danger, especially with such a person, that you may make him remember what he never saw or heard or knew, except through your forcible suggestion.

(d) Influence of other people's statements. Untrained persons who have seen or heard part of an exciting incident unconsciously try to complete the matter by fitting what they have seen or what they know to details told by others. They may even end, without untruthful intent, by weaving the whole garbled mess into their own story as to what they saw and heard and know.

(e) Strong feeling. Excitement and fear often lead to exaggeration in which important details are sometimes overlooked.

(f) Temperament, age, occupation. A ranger looking at a bunch of cattle sees also whether the range is overgrazed, or grazed in patches because of poor salting or water development. A city man sees cattle, but not the other factors, and could not be expected to give an intelligent statement on such matters.

(g) Fear of consequences. Be sure to relieve a witness's mind of a possible impression that you want to implicate him, etc., if such inferences are without cause. Frightened people imagining themselves suspected, always shuffle in testimony. This should be a danger signal, although the cause of the shuffling may not always be the one here discussed.

(h) Poor questioning. Good questioning requires hard thinking. Be sure nothing is missed. Follow your own course and do not be led or pushed, either designedly or accidentally, by the witness.

Increasing the accuracy of testimony.—Much can be done by careful questioning and suggestion to clear up obscure statements or to supply omissions. Check the witness's accuracy; that is, as to height of people, ask him if the man he mentions is as tall as yourself; check distances by asking about something in sight; verify his power of recognizing persons, estimating numbers, etc. It is sometimes necessary to verify statements independently of the witness. Scrutinize the witness's testimony all the time for indications of intentional untruthfulness.

INTERVIEWING HOSTILE AND LYING WITNESSES

Preparation for the interview.—For successfully interviewing this kind of witness thorough preparation is indispensable. Nowhere else is preliminary knowledge so essential both as to the connections and interests of the witness and as to a thorough grasp of your case and exactly what you want to find out. Finally, the circumstances and conduct of the interview itself must be carefully planned.

If you can prevent it do not interview such witnesses, especially suspects, on their own ground or among their own friends. Get them to come to the supervisor's or ranger's office or to a convenient room in town; at least to a place away from the support of their familiar surroundings and people. This may not be feasible at the first interview; but if you are convinced, or become so by talking with them, that they have knowledge of important facts which they have an interest in keeping from you, it is often wiser to postpone the serious attempt to get these facts until it is possible to do so under more favorable circumstances. On the other hand, it is desirable to question such witnesses, when possible, before they learn that they are suspected and have time to talk to each other. At least try to prevent communication between the witnesses until you have questioned them separately. Special care must be exercised to interview a group of related witnesses in the best order to prevent collusion between them. It is usually best not to interview two or more hostile witnesses together. Keep them apart and interview them separately whenever possible.

Always conduct interviews with an enemy to your case strictly as an official. Be courteous, but do not introduce everybody all round, or joke, or in any other way help to put the witness at his ease. Especially when the time has come to hammer hard for the facts or for a confession it greatly helps to surround the occasion with as much circumstance and formality as you can bring to bear. Have your own witnesses and assistants at hand; the more of them who are unknown to the person to be interrogated, or known only as officials, the better. A witness who is either the suspect or his accomplice or sympathizer, as is here assumed, will deceive you if he can and will not tell you the truth unless you can entangle him or otherwise bring pressure enough upon him to compel him to do so. One of the most valuable helps in this is to increase his nervous tension by every legitimate means.

Keep your notebook out and take time to record everything necessary or significant. Write down a minute description of suspects. This may be valuable to you and should form a part of the case record in any event. If you ask the witness, in connection with this record, for his age and make other pertinent points, it will usually help to increase his sense of the gravity of the case. Mental states go in waves, however, and it is possible to overstay the crest. The effect of everything upon the witness should be carefully watched and the right moment seized to go ahead.

The interview.—This is always a test of wits, but the investigating officer has the whip hand, since the witness is usually playing a dangerous game which affects his calmness. Falsehood involves a frame-up. The necessary thing is to get behind the frame-up. This means by which this can be done is thorough questioning; perfunctory or aimless questioning will not do it.

Unless the witness has previously made a statement or has refused to talk, it is usually best at first to let him tell his own story in his own way. If he is interrupted, he will begin to trim what he says accordingly. This statement should be signed and witnessed, as in any other interview, even though the investigator knows it to be a mass of falsehoods.

Then commence to question. In most cases interrogation should begin at a point a considerable time previous to the offense, and lead step by step in minute detail through it. The frame-up of a false case practically always revolves around an attempt to establish an alibi, and the easiest way to break this down is to

question minutely about details—how long together, how seated, what said, order in which things occurred, etc. When the alibi is true except as to date, get outside of it by connecting with dates some distance from the ones in question.

As soon as you reach a point not contemplated in the frame-up, contradiction will begin, which gives the officer a lead. In case a witness refuses to talk, show him that you have something on him. This will almost always start him to explaining; then it is comparatively easy to keep him going. When sure enough of your ground, you can begin to jump him directly with what you know to be false. Do not ask him if he did thus and so, but say: "You say you did thus and so?" and make him say yes; then, "I know better—you did thus and so." Make it clear that he can not string you; not by asserting it, but by demonstration. With some types of men, however, ground can be gained by even more severity; that is, "What do you mean by lying to me?"

To break the continuity of a man's frame-up thread is one of the greatest helps in getting the truth. To this end let questions skip around the story—to the end, then to the middle, and so on; occasionally jump to something outside of or beyond his story.

In general, look for motives of lying—relationship, friendship, business connections, etc. Scrutinize the testimony itself; see how he colors other people, favorably or otherwise, as an author paints his hero or villain in advance of actual deeds. It is important to build a *mental picture of the witness's story* as fast as he tells it. This will show discrepancies not at all apparent from mere words; that is, witness says his house was in danger of burning, but your mental picture shows that with the wind as already given, or as you know it to have been, his house was on the windward side of the fire.

All statements should be reduced to writing, if possible, over the witnessed signature of the person questioned.

The suspect in intentional offenses.—The written-out statement of an accused or suspected party should be followed by a statement that the foregoing is made by him voluntarily, realizing that anything which it contains may be used against him.

In addition to the above methods, if there is any possibility of a suspect having a previous criminal record, the questioning should in his case go back as far as is

necessary to include it, even to his childhood or his birth. This serves two good purposes. If he has any previous criminal record, the questioning may open the way for prosecution on some other offenses if the intended one should fail; and with hardened criminals it should be a rule to get them on something, if possible, even if not on the offense under immediate investigation. Nothing will serve better to give this kind of man a wholesome incentive to refrain from violating the laws. Furthermore, if there are shady spots in his record, close questioning will certainly make him nervous about them. He will forthwith be uncertain how much you know all along the line, and his nervous tension may materially help to bring out the truth as to the case in hand.

When the guilt of the suspect has been established to the satisfaction of the investigator, the chief object of such questioning becomes the forcing of a confession and a plea of guilty. Work to get him into the belief that you know all about it. If you do not know as much as you lead him to believe you do, it is vital not to make a slip which will show him what information you lack. When used judiciously, one is justified in taking some chances of this kind to gain an advantage and land a confession. When a case gets to court, it must be complete and watertight; but up to that point the game is yours, to make by any fair means you can.

But here a caution: A much longer chance in this direction can, in general, be taken in camp fire than in incendiary cases. Offenders of the former class are usually less independent in fact of representatives of the law, and they are usually nonresidents of the forest community. The incendiary, however, is usually a resident; he has less fear of an officer; and, by reason of having planned his act beforehand, he is definitely prepared to beat you at the game and is likely to know what you can do and what you can not. If you lose through having bluffed and failed, it may set you and the service back very seriously in the community's estimation.

Threats and promises.—Both of these must be scrupulously avoided, since either one will completely invalidate a confession in court. Even the use of the words that it will be "better" or "worse" for the suspect to do a given thing must be avoided. If a suspect shows a desire to seek immunity or clemency as a preliminary to confessing, it is legitimate to state that you will be

willing to say a good word for him if he makes a clean breast of it, but promise nothing as to final action.

In any event, play clean. Neither self-respect nor the respect of the community in which you must work and live should be jeopardized by resort to questionable practices.

Use of the law on perjury.—For persons who persistently refuse to confess, or admit the truth, the following is often effective. Referring to your notes of their conversation, say: "Are you willing to make an affidavit that you are not guilty in this case?" Or, if this has been done, "You are still going to swear to this in court?" Then, "You probably know the Federal law on such testimony?" Read aloud the statute respecting perjury, emphasizing the heavy penalties provided. If they have lied, this seldom fails to start them hedging, and finally to bring a confession. Care must be used, however, not to give them any comeback in court by doing this as a threat. It is always an officer's right to inform persons of the law.

Keeping temper.—Always keep your temper. A man who loses his temper is at the mercy of a cool opponent. You can not afford it, no matter what the provocation; the accused may be trying to "get your goat."

VALUE OF CONFESSION

A confession is not admissible in court unless it is made of the prisoner's own free will, free from promise or threat, and without misapprehension as to its possible use against him. For these reasons it is always liable to successful attack by the defense, even if the accused does not repudiate it in court. The latter contingency can be guarded against by having a witness to the making; because in the event that the prisoner is discharged by the court, it may then be possible to convict him for perjury. Whatever the fate of the confession itself, it should always be obtained, or tried for, since it may bring out valuable admissions or facts, which can then be run down and established by independent evidence, making them as valid as any other facts similarly established. The established contradictions of a confession will likewise be of the greatest value in court. After getting a confession, the questioning should be continued, to obtain such facts, if they have not already been obtained. If you can stay

friendly enough with the suspect to get him to tell you just how the deed was done, not only will this object have been attained, but you will have reinforced your own knowledge of criminal methods and motives. Write down all such conclusions and lessons for future guidance.

IDENTIFICATION OF PERSONS

Forest officers usually know local incendiaries, but they may need to spot persons unknown to themselves, such as hunters or campers responsible for fires.

The face, of course, is most relied upon. The main point of the identification method used by experts, and the one most often overlooked by laymen, is careful study of details. Not only color of hair and eyes, general shape of head and face, whether clean shaven or otherwise, must be noted, but also contour of ears, rims, fleshiness and amount of lobes, and angle made with head (including aspect from behind); contour of chin and jaw from front, protrusion or recession in profile, "double" chin or otherwise; type of mouth, peculiarities of teeth, thickness of lips, peculiar twists and habitual surrounding lines, if any, and characteristic expression; contour of nose, both front and profile, especially character of its point, and width, flare, and exposure of nostrils; eyes close or wide apart, how framed in head, size, external peculiarities—such as character of lids, appearance of cornea, size of pupil, and especially behavior and expression of the eye; color, thickness, length, and disposition of the eyebrows, especially how nearly they meet across the nose; contour and slope of forehead, especially any prominent bulges over eyes, etc., and characteristic wrinkle marking; outline of edge of hair and its manner of growth; moles, warts, wens, scars, or other peculiar markings. These, of course, are in addition to the manner of carrying the head and other individualities, which give much aid in identification.

When it is a question of identification from an indistinct photograph or one several years old, the most unchanging items are the following: Angle of spread of ears and conformation of their lobes; type character of mouth and lips; conformation of end of nose, spread and exposure of nostrils; width apart of eyes; degree of approach of eyebrows across the nose; characteristic bulges of the forehead, if any; and the peculiarities of the hair line (barring change by baldness, which is usually discernible if present). These features, too,

are the most useful for detailed verification of an identification from description, and should be obtained in such a description, in addition to the common items of age, height, weight, complexion, eyes, hair, beard or mustache, birth or accidental marks, clothing, carriage, gait, and general appearance.

Few persons can give a good description without coaching. Even if asked whether there are any noticeable peculiarities, they are likely to say "No." and yet, when asked about eyes, nose, mouth, ears, or hair, they will remember something useful. Ask also about the specific points discussed above.

Plain-clothes work.—Forest officers will have only infrequent need to use the police supplemental devices to identify suspects, so that only a suggestion or two will be indicated here. An officer usually first follows and studies the suspect from behind, then gets ahead and comes to meet him. If he is sure enough, he accosts him by his real name, watching closely for response. No matter how a man steels himself against it, it is almost impossible to avoid some visible surprise response when an alias hears his true name called unexpectedly. If the officer is not ready to show his hand, he often follows a few feet behind a suspect, and an assistant a little behind himself; the first officer then calls the suspect's name sharply and dodges inside a doorway. If the suspect turns, he does not see the officer, and the assistant when he passes the door can tell the latter whether the suspect has betrayed any response. In shadowing, most police officers prefer to keep to the outside of the walk.

VALUE OF REWARDS

Considerable help in the fire situation can be given by greater publicity in regard to available rewards for assistance leading to convictions. Nearly every community has a would-be Sherlock Holmes, and many such men would work faithfully on forest cases and be valuable allies, once they definitely know that they stand a chance of getting a reward commensurate with the time spent. If so, let them have reward and credit both; results are of first importance, and no forest officer's official credit will be lessened because of such an outcome.

ACTIONS UNDER LEGAL PROCESSES

AFFIDAVITS

Most forest officers are already familiar with the making of an affidavit. This can not be used directly as evidence, but is useful for the moral effect upon the witness as to the gravity of the testimony covered by the affidavit; it also safeguards this testimony in allowing a basis for cross-examination should the deponent later repudiate his statement.

ARRESTS, COMPLAINTS, AND WARRANTS

Under the acts of Congress of February 6, 1905 (33 Stat. 700), and March 3, 1905 (33 Stat. 872), forest officers have authority to arrest upon warrant any person charged in a proper complaint with violating the Federal laws or regulations relating to the national forests. For offenses under the State law, forest officers have authority to arrest on warrant only after having been appointed deputy State fire or fish and game wardens.

For offenses committed in their presence, forest officers have authority to arrest without warrant, in case of either Federal or State offenses.

Warrants of arrest.—For State offenses, warrants must be obtained from and returned to a State magistrate, that is, justice of the peace, police magistrate in towns or cities, judge of the superior court, or justice of the supreme court.

When the name of the person who committed the crime is not known, the magistrate can, for satisfactory cause, issue a John Doe warrant.

In Federal cases arrest should be made in advance of indictment only when this is absolutely necessary to prevent the escape of the accused, or when the offense is committed in the presence of the arresting officer. For the reasons for this statement see "Preliminary hearings," page 73. Federal warrants should ordinarily be procured from the nearest United States commissioner. If it is impracticable or unduly expensive in time or money to reach a commissioner, warrants in Federal cases may be obtained from a justice of the peace or other officer mentioned in section 1014, United States Revised Statutes, which is as follows:

For any crime or offense against the United States the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme court or superior court, chief or first judge of common pleas, mayor of a

city, justice of the peace or other magistrate of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

Complaints and information.—Warrants for arrest from a justice of the peace are issued on complaint sworn to by a responsible person, upon a showing of probable cause sufficient to satisfy the issuing magistrate. The officer seeking the warrant should be able to show facts and evidence if necessary, and not merely information and belief. However, it is well not to divulge too much so as to expose one's hand in the prosecution of the case.

The complaint must designate the specific offense committed and specify the statute and section violated, with such particulars of time, place, person, and property as to enable the defendant to understand clearly the character of the offense charged. Extreme care should be used in drawing the complaint, since not only the arrest but the case in court will be based upon it. In the wording of the complaint the language of the law invoked should be closely followed. Include only what you are sure you can prove; in a larceny case, for example, the exact items and numbers charged as stolen must be proved or the case will fail. Charge the easiest offense to prove, that is, having game in possession out of season, rather than killing, unless evidence on the latter is ironclad.

Each offense of the same general nature under separate subsections of the statute should be made a separate count. Also when more than one offense included in the same subsection is to be charged, charge always in conjunctive; that is, "did kill and have in his possession," not "kill or have," etc. If several men are taken for one offense they should be charged jointly, since this saves time and expense in multiplication of cases.

In misdemeanor cases under the State law the complaint must be filed within one year from the date of the offense.

In case a justice of the peace or county judge refuses to issue a warrant when so requested by a forest officer on valid grounds, or expresses hostility to the

enforcement of the fire, game, or other laws, fines below the minimum, or otherwise fails to give proper official attention to such cases, the matter should be reported to the district forester and will be taken up with the State attorney general.

A United States commissioner issues a warrant for arrest in Federal cases upon sworn information. Equal care should, of course, be used in keeping this free from defect.

Service of warrants.—Constables, sheriffs, etc., are the authorized agents of the courts in serving legal processes, and since their fees result from their performance of this work, not only can our own time and expense be saved, but often better relations with these men can be maintained by turning over such service to them.

However, do not ask or expect them to work up your case for you. You are the investigator and that is your business. Much past apathy to fire-law enforcement on the part of public officers has been due to half-baked cases or simple pieces of rumor or gossip being taken to a justice or sheriff or prosecuting attorney in the apparent expectation that he would do all the rest and present us with a conviction and his thanks. Forest officers are gaining the reputation of presenting well worked-up cases. Nothing will more surely gain the cordial cooperation of public officers all along the line and indirectly of the communities which they influence.

After swearing out the complaint, it is usual to ask the magistrate when the arrest can be made, and, unless it is already known to the complaining officer, by whom. This enables the forest officer to keep in touch with the progress of his case.

Limitations upon service.—A warrant of arrest is, in general, to be served only within the jurisdiction of the issuing magistrate or officer, unless otherwise specifically authorized upon the warrant. A warrant issued by a justice of the peace may be executed anywhere in the county where issued, outside of municipalities. The latter are expressly exempted from the operation of the State fire laws.

If the defendant is in another county, the warrant may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant and signed by him with his name of office and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of ———"; but this indorsement can be made

only when the warrant is accompanied by a certificate of the clerk of the county in which the warrant was issued, under the seal of the superior court thereof, as to the official character of the issuing magistrate, or upon the oath to that effect of a credible witness, in writing, indorsed on or annexed to the warrant. When it is foreseen that service of such a warrant may be necessary in another county, the county clerk's certificate above specified should be secured, if not too inconvenient; when this has not been secured the alternative personal statement above provided for can usually be made by the forest officer himself, on the credentials of his badge and official position.

A warrant of arrest for a felony may be executed at any time of day or night. For a misdemeanor, arrest can be made only in the daytime unless night service is specifically authorized in the warrant. Daytime, for such purposes, is defined as from sunrise to sunset.

Service by telegraph.—Under the State law a justice of the supreme court or a judge of the superior court may, by an indorsement upon the warrant of arrest, authorize the service thereof by telegraph, sending an authenticated telegraphic copy thereof, which is then as effectual in the hands of an officer as the original. Similarly, a Federal judge may authorize the service of a warrant in a Federal case by telegraph.

The arrest.—Arrest is made by an actual restraint of the person of the accused or by his submission to the custody of an officer. The prisoner is usually, and on demand must be, informed of the cause of the arrest and the authority to make it, and shown the warrant when acting under a warrant. An officer acting under a warrant may use all necessary means to effect the arrest if the accused resists or flees after being informed of the intention to arrest him. He must not, however, be subjected to any more violence or restraint than is necessary for the arrest and detention. In fact, all unnecessary officiousness or unpleasantness should be avoided, since much more can afterwards be gotten, as a rule, out of a prisoner well treated, and there will be no chance for his attorney to bring charges of bullying. An officer making an arrest may orally summon as many persons as he deems necessary to aid him, and refusal to render such aid is a punishable offense. A United States commissioner can summon any necessary county, State, or Federal assistance to apprehend the person or persons for whom his warrant is issued.

When an arrest is made, the person arrested should be searched, unless he is willing at once to plead guilty. In this work the value of search is not so much for dangerous weapons as (1) to secure articles which may afford good evidence, especially microscopic evidence in the case of articles, such as knives, which have been much handled by the suspect; or (2) for the effect of the search in impressing the suspect with the gravity of the case, which is especially valuable if arrest is to be followed by "sweating." An additional aid in respect to the second point is the taking of a personal description of the suspect, which may well be done at the time of arrest. Search of a person under arrest requires no separate search warrant.

Peace officers making arrest on authority of a warrant, or when an offense is committed in their presence, are protected from any action for unlawful arrest. In the case of forest officers this protection will be invoked to the full by the district office.

Return of warrants.—When an arrest has been made the prisoner must usually be returned to the magistrate or other officer who issued the warrant.

In State misdemeanor cases, when the defendant is arrested in another county, the officer must, if required by the defendant, take him before the magistrate in the latter county, who must admit the defendant to bail. When such a demand is not made, or if bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant as above provided.

When arrest is without warrant, the prisoner must be taken before an appropriate magistrate as soon as practicable after the arrest. In a State case this may be whatever convenient justice of the peace within the county will give the case best attention; except that, if the prisoner demands it, he must be taken before the justice nearest to the place of arrest.

On arrival before the magistrate a proper complaint must be executed. Whether a warrant shall be issued upon it is subject to the discretion of the magistrate, in view of the course thereafter to be pursued. If a warrant is issued, its return is made simultaneously with its issue.

When a prisoner is brought to a State magistrate of final return, in cases over which he has trial jurisdiction, the charge is read to the defendant, and, if he pleads guilty, he may be sentenced forthwith; otherwise a trial is had or future date set for it.

In a Federal case, when arrest is made without a warrant, the person arrested should be taken before the nearest United States commissioner or, in case it is not practicable to reach a commissioner, then before a justice of the peace or other officer mentioned in section 1014 of the Revised Statutes. As in the previous case, return of warrant is made simultaneously with its procuring.

When a warrant for a Federal offense is returned to the United States commissioner, or magistrate, as previously provided, either upon previous issue or arrest without warrant, the accused, after preliminary hearing or if that is waived, is bound over to the Federal court. If he is unable to give bond, he must be delivered to the United States marshal.

SEARCH WARRANTS

A search warrant may be secured by a forest officer with peace powers on his affidavit, from a justice of the peace or any other magistrate (United States commissioner in Federal cases) for the search of any premises thought on reasonable information or belief to contain articles which it is desired to seize, or to examine, against the owner's will. A search warrant is equally as necessary to enable an officer to lead out a man's horse and take measurements of his tracks, if the owner objects, as it would be to permit the seizure and removal of the animal. The same applies, strictly speaking, to search of a man's pack, or buggy, or automobile for evidence of having set a fire.

A search warrant must specify the exact premises, person or owner, and articles involved. Barns or out-houses, for example, can not be searched on a warrant specifying the house only. If, in searching for certain articles for whose seizure a warrant has been secured, other desired articles are found which the warrant can not be construed to cover, another warrant must be secured for their seizure.

Search warrants can be executed only in the daytime (sunrise to sunset) unless night service is specifically authorized by the issuing magistrate in the warrant. Entry of premises or buildings may be effected by forcible means if necessary; but no more force must be used or damage done than is requisite to accomplish the entry and search as authorized by the warrant. For all articles seized the officer must give a receipt. It is always desirable to have outside parties other than

forest or police officers present at a search, if possible the proprietor or members of his family. This is a valuable safeguard against possible trouble in court.

In search by appropriate means under a duly issued warrant the executing officer is protected, even though it should develop that the search was made on misinformation; but he would be liable for the exercise of unnecessary violence or for damage.

Permission can sometimes be obtained to search without warrant by an officer clearly entitled to obtain such a warrant, especially if the person whose premises it is desired to search is amenable to the consideration that, even if one is innocent of connection with any offense, subjection to proper search is one of the duties of citizenship in aiding the processes of the laws which protect all. If he still hesitates, ask him point blank if he is concerned in the offense and, on his denial, point out that such denial constitutes the reason why he should not object; that objection will only give you the trouble of getting a warrant, and will justify a suspicion which will necessitate a more thorough search.

If a search of premises is made without warrant, with the owner's permission, and anything is found which it will be desired to use in court, a warrant for its seizure should be secured as soon as possible after thus actually seizing it; or if there is no danger of its being removed and secreted in the meantime, the seizure itself should be postponed until such a warrant can be secured, in order to forestall the attorney for the defense making trouble, or causing annoyance in court upon this point as a pretext.

EXPENSES IN CONNECTION WITH LEGAL PROCESSES

Forest officers will be officially reimbursed for all necessary expenses incurred in accordance with the fiscal and administrative regulations of the Department of Agriculture in the transportation of arrested persons to custody, or for necessary subsistence of such persons at hotels, etc., or for necessary expenses in the execution of any other necessary legal process for which no other authorities can properly assume responsibility, in the prosecution of violators of the laws, or of the regulations of the Department of Agriculture, in national forests. As has previously been pointed out, however, expense, as well as the time of forest officers for other needed duties, can often be saved to the Forest Service by making use of sheriffs and constables for the serving

of warrants, subpoenas, and other such assistance. In particular, the hiring of men for posse needs, or to accompany officers for identification of witnesses, in State cases can appropriately be assumed by the counties, and its expense should by the above means be transferred to them when it is feasible to do so. If it is necessary for a forest officer to bring in a witness, the latter should pay his own expenses if possible. Either the forest officer or the witness can in such duly authorized cases be reimbursed by the court under the conditions imposed by law; but no reimbursement for expenses in connection with witnesses can be made by the Forest Service. Certain other expenses in connection with the trial itself can sometimes be assumed by the sheriff or the United States marshal, as the case may be, or by other agencies of the administration of justice. It is impossible to make general instructions which will fit every contingency. In case of any doubt, specific advice should, whenever possible, be sought before incurring the contemplated expense.

PREPARATION OF THE CASE

PREPARING THE MATERIAL

When all possible or necessary evidence in a case has been run down and the necessary witnesses provided for, with a definite understanding of just what each will testify to, all these facts in the case must be put into systematic and workable shape.

REPORT ON FORM 874-20

The first thing required is the report on Form 874-20, in accordance with the National Forest Trespass Manual.

THE WORKING MEMORANDUM

For the purpose of the case in court a somewhat different organization of the material will be desirable, for which approximately the same form will apply, whether it be prepared for conduct of the case by the forest officer, which he will doubtless be called upon to do in many justice's cases involving no legal difficulties, or as a memorandum for the district law officer in more important or difficult cases.

Several persons may be prosecuted together for the same fire, or any one alone. Separate fires, especially if on separate days, should be reserved for separate

cases, so as not to have used up all ammunition if the defendant is unexpectedly acquitted on the first one.

The main case.—Arrange the material so that it tells the story in chronological order. Confine the main case to the material essential to a clear and complete chain of evidence. This gains the advantage of clearness of impression on the jury; too great a mass of evidence may muddle the main issue in their minds. Any additional material should be carefully worked up with a view to its use in rebuttal or in connection with surprise defenses as discussed below.

Have your record perfectly clear as to exactly what part of the chain the testimony of each witness and each piece of documentary evidence will cover, and just what link each exhibit will support. Avoid repetition as far as possible. Whenever it is necessary to mention again something already related, simply refer to it, with the page on which it first occurs. If your record is to be used as a memorandum for the district law officer, the reviewer, if without other knowledge of the case, may otherwise have difficulty in determining whether such an incident is a new occurrence or one previously related.

Rebuttal, etc.—Here one should anticipate what defenses may be set up and provide in advance for meeting them. The defendant will usually try to introduce testimony contradicting that of the prosecution; but he may put in evidence unexpected facts tending to explain away or otherwise refute the evidence of the prosecution. The cross-examination offers the first opportunity of nullifying such evidence; if this can not be accomplished at this point, the prosecution may need new testimony to impeach the credit of the defendant's witnesses.

Appendix.—A list of the witnesses, with brief notation of the exact facts to which each will testify, together with all documentary evidence and a list of exhibits, should be collected in an appendix, each separate item being designated by letter, as, for example, "Exhibit A." At the appropriate points in the narrative record these documents, etc., should be referred to only by exhibit designation. This helps both in completeness and in keeping the narrative clear.

Outline.—A good outline on which to get material together is the following:

1. The offense—what, where, when, how, by whom, why.

2. Information.

(a) Rumors.

(b) Clues.

3. Main evidence—the facts, in order, with names of witnesses who will testify to them, as shown in detail in appendix at end of report.

4. Evidence available for rebuttal or to meet possible surprise defenses.

5. Appendix—as above.

USE OF MAPS

The trespass map.—The trespass map must show completely the facts of trespass and damage suffered. It should include, therefore, land section, township, and range; boundaries between national forest and other lands; drainage; roads; houses and culture bearing on the case; area covered by the trespass; and, in case of fire, its origin with respect to forest-land boundaries; cover species or type, and size of lumber; and nature and extent of damage. The investigator should not be required to make this map, if it can be done by others, such as rangers in charge of suppression. When necessary on account of close questions of boundary, the district forester will send an expert surveyor to make a transit survey.

The court map.—The map to be presented in court should be on a scale large enough to be legible when hung up so that the jury can all see it at once, since it is much more effective when used in this way. It should be confined to the data essential for the purpose, but it should show this with the utmost clearness. Its legend should give also its “*approximate scale*,” and if angles of view are material, a statement that these are correct. Every care should then be used to see that they are correct. Any “trespass” or other designation on the original to which the defense could object as tending to prejudice the jury in advance must be omitted.

As to land boundaries, the proclamation diagrams of the national forests can always be found in the biennial volume of the United States Statutes at Large, covering the year in which they were issued. Private land boundaries can be gotten from Forest Service status and verified and certified by the United States Land Office if desired.

INVESTIGATION REPORT TO DISTRICT FORESTER

For all cases made the subject of law-enforcement investigation, whether carried to court or not, a report in accordance with Form 618b must be made and forwarded to the district forester. This report is short and is the only one regularly required by this office to enable it to keep in record touch with the work. If the case is carried through the court by the investigating officer, this report will be complete; otherwise it will end where the case passed into the hands of the district law officer, or was dropped.

Publicity.—Whenever this report is made, either in connection with a memorandum for the district law officer's consideration of a case or as final report of a case conducted by a field officer, the investigator should take pains to note any special features that will help to make press publicity most effective. There are often angles in such cases which can be used to the greatest advantage and which only the man on the ground can supply. If he desires to submit direct copy for this purpose, so much the better.

PREPARING FOR COURT

PLANNING THE COURT CASE

When the case in court is to be conducted by the forest officer, he will need also to plan in as much detail as possible every item in the procedure. This plan may, of course, be upset by unexpected moves on the part of the defense, but a plan definitely made in advance is the only basis of success. Such a plan can be changed to meet exigencies; but only wandering and oversight of critical needs can result from leaving each step to be planned as you go.

The plan should include:

1. Security of possible jurors, and of any whom you should try to remove by challenge if an advance line on the panel is possible.
2. Preparation of prosecution statement of the case. (See under "Court procedure" below.) If the accused is to plead guilty, this will be used as a statement of the circumstances of the case, for which the justice generally asks to guide his sentence. If he does not do so, the prosecution should ask permission to make such a statement, unless it is reasonably certain that the court is already cognizant of and sufficiently impressed by all the essential features of the case. If leniency is

recommended, on account of a confession, or of exenuating circumstances, minimum sentence should usually be asked. Reserve request for suspended sentence for very special merit; too many of these are dangerous.

If a jury trial will be necessary, the prosecution must also plan:

3. The exact order in which his witnesses should be called in building up the main case, and the questions which he will ask each one. When this is worked out in the rough, the whole should be studied in the light of the law of evidence so that mistakes may be avoided.

4. In connection with what can be learned of the probable defense of the accused, who his witnesses will be, and what they will testify to, the line of cross-examination must be worked out for each of his witnesses, in order to make the testimony accomplish as little for the defense and as much for the prosecution as possible.

5. Your own witnesses and their evidence in rebuttal, or for the purpose of impeaching witnesses for the defense, or of counteracting surprise defenses.

Every care should be taken not to let the defense get knowledge of your plans.

GETTING AND PREPARING WITNESSES FOR COURT

Subpœnas, etc.—The attendance of witnesses for preliminary hearing or trial is secured by means of subpœnas, which can be issued by any magistrate having cognizance of the case. A witness may be arrested or bonded to insure his appearance in court; also, if the witness after having had the subpœna served upon him does not so appear, he is in contempt of court and subject to arrest and all other penalties attaching thereto. Subpœnas can be served only by handing them in person to the person for whom issued. They can, however, be served at any time of day or night. A subpœna issued by a justice of the peace, unlike a warrant, can also be served anywhere in the State, without the necessity of specific endorsement.

Do not use witnesses from the Forest Service any more than is necessary, especially if either justice or jurors are likely to be affected by hostility to it or its work. Select for witnesses persons of as high reputation as possible, since the defense will attack them if it can.

Preparing witnesses.—A definite understanding must be had with each prosecuting witness as to exactly what

he will testify to, based both on what he can testify to and on what portion of this you will want him to testify to. His testimony must then be gone over, to insure both that he will tell the exact facts and that his statements will not be open to objections by the defense, which might destroy the effectiveness of the evidence as well as mix up the witness; but care should be taken to avoid anything than can be misconstrued as "coaching," or "framing" of evidence. In connection with this work certain points are always legitimate, and should be clearly impressed upon witnesses.

1. On direct examination they should only answer questions, not explain. This will let the questioner be the judge of what and how much shall be said.

2. Except when it is based upon a written record, which can be referred to in court, testimony should not be too exact, especially as to time, but should be qualified by some such phrase as "to the best of my recollection." This will prevent giving a loophole for its discrediting by the defense on any points of non-essential exactness. If exactness is required on any point, see that you have a record to make it so.

3. When testifying from a notebook or other record do not read word for word, but let the record be referred to as a guide or help to the memory on details. This is always permissible, whereas direct reading may raise annoying objections to the admission of the record in evidence.

4. Photographs must be introduced in evidence by the person who made them. Enlargements must be accompanied in evidence by the originals from which they were made.

Other points may need attention, of which the following may be mentioned:

5. Testimony of conversations at second hand can not be used in court.

6. Testimony respecting a confession should usually relate the conversation and the fact that it was voluntary, without referring to it as a confession, or to the signed statement, unless, or until, the examiner desires so to bring it in.

7. Testimony on matters requiring expert opinion necessitates the qualifying of the witness, and the basis of this qualification should be definitely determined.

A scientific expert usually tells the attorney what he has, and submits a lists of questions, then together they decide upon the ones to use. The materials upon which expert testimony is based must, of course,

first be placed in evidence by the witness who found them. In respect to finger prints, for example, a forest officer should testify that he found the given article, suspected it to contain such prints, developed them, and later secured the prints of the suspect. But no nonexpert witness will be allowed to testify as to similarities or any other matter of opinion or conclusion. If it has not been possible to get expert evidence as to identification, the matter will have to be left there, for the jury to study and draw their own conclusions, except that the attorney or other person conducting the prosecution can take up the subject later in his argument to the jury, and, if he has not been able to bring on an expert witness to testify to such matters, he may then draw out what would otherwise have been covered by them. This, of course, is a less effective method than to have the identification covered by actual testimony.

8. Guard, as far as possible, against opinions by your own witnesses that the accused was drunk when the offense was committed or that he is a monomaniac (that is, in respect to setting fires). These constitute possible defenses which will be seized by the opposing side. If on their own motion they set up such a defense, every means should be used to counteract its effect on the jury, either by impeaching such testimony or by strengthening elements of the case showing moral responsibility. When such a defense is probable prepare for it beforehand.

A case against a female defendant, or anyone with a bodily infirmity, must be exceptionally strong, since juries are easily swayed by sympathy in such cases. Every precaution should be taken to minimize the effect of possible appeals to such sympathies.

AMENDMENT OF COMPLAINT

Should it be found, after all preparation has been made, that, for any reason, such as the failure to obtain a witness, the sustaining of some count will be impossible or improbable, or, if at any time the complaint is found to be defective, application can be made for its amendment or for the issue of a new one. The latter usually involves fewer difficulties.

PRELIMINARY HEARINGS

In Federal cases action is better commenced on misdemeanors by an information filed in the Federal court by the United States attorney rather than by an indictment; in the case of felonies action must always be commenced by indictment of a grand jury. The binding over to a grand jury of a prisoner previously arrested necessitates a preliminary hearing to determine whether he shall be so bound or be dismissed, unless the prisoner waives the hearing. If he has an attorney or knows his own best interests, he will not waive it.

Preliminary hearings are undesirable, from the standpoint of the prosecution, for three reasons: (1) The prosecution must state its case, with witnesses, and thus show its hand, while the defense need not show anything; (2) the prosecution is thus under the expense of producing its witnesses one more time than would otherwise be necessary; and (3) the commissioner or magistrate, if unfavorable to the case, or perfunctory, can dismiss the accused instead of binding him over for trial. Such dismissal does not prohibit his being brought to trial through other means, but it is a hindrance which should not be invited. Unless immediate arrest of the criminal is necessary, as discussed under "Warrants," the facts in Federal cases should first be submitted to the district law officer, who will, if the evidence warrants, initiate proper action through the United States district attorney, and thus avoid the preliminary hearing complication. Arrest will then be made by the United States marshal after the indictment is secured.

THE CASE IN COURT

COURT PROCEDURE

Only the procedure in a justice's court, in which forest officers may have to conduct their own cases, will be discussed here.

ORDER OF PROCEDURE

1. *Arraignment*.—Reading of complaint and taking of the plea, which is oral. The defendant must be personally present when this is done.

2. *Impaneling the jury*.—Unless a trial by jury is waived by consent of the parties in open court, the bailiff under instructions from the court summons 12

men to fill the jury box. Either party may examine the panel to ascertain whether there is cause for objection to any member thereof, and, if the jury is then satisfactory to both parties, it will be sworn.

Challenges.—Upon challenge for cause any or all may be excused by the court if the cause alleged be deemed sufficient in the opinion of the court. The causes for challenge are numerous and are set out in sections 1071 and 1074 of the Penal Code. It is sufficient here to indicate briefly the more important, which are: Lack of any of the qualifications prescribed by law; unsound mind; previous conviction of a felony; bias. The first and third would many times be only ostensible causes. The most vital cause is really bias. This may result from relationship to or friendship for the accused, or interest in the outcome of the case, antagonism to the Forest Service or to forest officers concerned or to fire or game prosecutions, or belief in burning as advantageous, etc.

Of peremptory challenges the prosecution is entitled to *five*, for which no cause need be shown, and the defendant is entitled to *ten*. Since peremptory challenges are limited in number, challenge for cause should always be exhausted first. In making a peremptory challenge simply say to the court, "I would like to have John Doe excused"; never say, "I challenge John Doe."

3. Opening statement of the prosecution to the court and jury, outlining briefly what the case is and in general terms what the prosecution expects to prove in such a way that the case will be clear to the jury. This is extremely important.

4. Introduction of evidence by the prosecution, each witness for the prosecution being examined in the following order:

- (a) Examination in chief, or direct examination, by the prosecution.
- (b) Cross-examination by the defendant.
- (c) Reexamination by the prosecution.

5. Prosecution rests its case.

6. Statement by the defense of its case, with a brief outline of what it expects to prove.

7. Introduction of evidence by the defense, each witness for the defendant being examined in the following order:

- (a) Direct examination by the defense.
- (b) Cross-examination by the prosecution.
- (c) Reexamination by the defense.

8. Rebuttal, if any, by the prosecution.
9. Argument; prosecution opens, then defense, then the closing by the prosecution if it so desires.
10. Charge to the jury by the court.
11. Verdict of jury.
12. Sentence, or discharge of defendant.

EXAMINATION OF WITNESSES

Direct examination, or examination in chief.—Witnesses are directly examined by the side for which they appear, to elicit the truth about the matter involved in the case, or so much thereof as will be calculated to benefit the case of the party calling the witness. One should know just what facts can be proven by the witness and ask only such questions as are necessary to bring out those facts. Never ask a question without a definite object, and when the witness has given the testimony for which he has been called discontinue the examination at once. Endeavor to put a favorably disposed witness at his ease. Adopt a friendly and respectful manner and begin by asking a few simple questions, such as name, place of residence, and business, in an ordinary conversational tone, giving the witness time to collect his ideas and get over the natural embarrassment which most persons feel when first put upon the stand. Then direct his mind to the matter about which his testimony is required, and after starting him on the right track let him tell his story in his own way, with no more interruption than is necessary, since interruptions tend to confuse and irritate.

If it is necessary to call a hostile witness, adopt a more positive manner and endeavor to make him state just as much as is required and no more. All attempts at explanation should be stopped by telling him that he will have an opportunity to explain as soon as he has answered the question. If the hostility of the witness is made apparent to the court, he may permit leading questions (in which the answer is indicated by the question) to be asked in the examination in chief, although ordinarily one is not allowed to ask his own witnesses leading questions.

In introducing a map as evidence, if objection is raised by the defense on the score of accuracy, which can not otherwise be overcome, state that you merely wish to introduce this map to illustrate the witness's testimony.

Cross-examination.—The witness under cross-examination is of the opposing side; he is presumably adverse and is likely to say something damaging if given the opportunity. Therefore, the rule never to ask a question without a definite object is doubly important. Indirect or camouflaged questions are of the greatest service in cross-examination, to drag out facts which the witness will be on his guard against admitting.

The principal things to be guarded against in cross-examining are: (1) Permitting the witness to supply any omissions which he may have made in his testimony in chief; (2) permitting him to explain any apparent inconsistencies that he may have fallen into; (3) allowing him to repeat and emphasize his testimony given on direct examination; (4) asking any question which will give the opposing counsel to bring out on reexamination some unfavorable testimony which would not have been admissible but for the injudicious question put during the cross-examination.

It is well to learn all you can about the history of the witness you expect to cross-examine, as facts concerning his life or previous activities may enable you either to discredit his testimony or to bring out facts to help your own case. The main idea of the cross-examination is to discover the weak point or points in the witness to be cross-examined. If the witness has, on direct examination, told a story which is known to be or is evidently fabricated, such fabrication can not be exposed by taking the witness step by step over the story as he told it on direct examination; but it may be done either by beginning to cross-examine concerning facts outside the story, or by skipping back and forth from one point in the story to another, or both, in order to disconnect his fabricated train of thought, if possible.

If a defendant denies on the stand a confession introduced by your witnesses, his signed confession may be introduced in rebuttal, first having laid the foundation by asking the defendant if he did not sign a confession. If he denies the confession and signature, the following procedure may be adopted. First, appear to pass over the matter; then later casually ask the defendant to write on a paper a number of apparently meaningless words, such as "cat, dog, car, land, stone." Some of the words included, however, are words whose initial letters, and certain syllables in them, are the same as corresponding elements in the defendant's signature. At the end he is asked to sign his name. If he has

written his usual signature, it is then immediately introduced for comparison by the jury with his signature appearing at the close of the confession. If he has been shrewd enough to suspect a ruse, and has disguised his signature to the list of words, this fact can be demonstrated by comparing the signature with the corresponding syllables and letters appearing in the words themselves, and also by showing that the latter do correspond with his confession signature.

Reexamination.—This is for the primary purpose of repairing any damage which opposing counsel may have done to your case in his cross-examination of your witness. Advantage is of course taken of the opportunity to strengthen one's own case in any particulars in which the need for it may have become apparent and in which it is possible to do so; but no new matters may be introduced, unless the opposing side has opened the way for them in questions on cross-examination.

Rebuttal, etc.—Rebuttal testimony, as the name implies, must be based on testimony already introduced by your opponent, which it is desired to refute or nullify. Additional testimony regarding a confession which the defendant has denied on the stand can, for example, be introduced in rebuttal. In such a case, a witness on your side can then be asked the direct question whether he remembers a given conversation or statement. But no new material, that is, matters for which the way has not been opened by preceding testimony, can be introduced.

One of the common methods of rebuttal is the impeachment of opposing testimony. The credit of a witness may be impeached in four ways: (1) By disproving, by the testimony of other witnesses, any facts stated by him which are material to the issues on trial; (2) by proof of his having made statements out of court with his testimony (this being usable only if you have first laid the necessary foundation by interrogating the witness, in the cross-examination, about such contradictory statements); (3) by proof of any facts showing a bias or prejudice on the part of a witness in favor of the party by whom he was called, or against the prosecution (such as relationship, sympathy, or interest in the outcome of the case); (4) by general evidence affecting the witness's character for veracity.

Direct and reexamination by opposing side.—During direct examination, or reexamination, of their own witnesses by the opposing side, attention must be given to all the questions and answers. Notes taken of the testi-

mony are very helpful for one's own cross-examination of opposing witnesses, as well as for one's argument to the jury if such an argument is to be made.

OBJECTIONS

The strictest attention to questions is necessary, during examination of their own witnesses by the opposing side, both to see that they are properly put and to ascertain their design; and to the answers, so as to consider their effect, and to prevent any objectionable testimony being received without exception being made to it. Good judgment and great quickness of perception are necessary, as well as familiarity with the law of evidence, to know exactly when and how to object to evidence. The making of too frequent and too frivolous objections is apt to have a bad effect on the jury, especially when they are overruled; on the other hand, many a case has been won by skill in invoking and enforcing objections at the right moment.

Improper questions must be objected to before they are answered. If, however, the question be one which does not necessarily call for incompetent testimony but such testimony is in fact given in reply thereto, objection should be made, not to the question but to the answer, or to such part thereof as may be incompetent or irrelevant, as soon as this fact becomes apparent. When a question calls for evidence which may or may not be competent, the opposing counsel has a right to interpose and cross-examine the witness upon points material to the competency of his proposed answer; and when a question calls for evidence which may or may not be relevant, the questioner may be required to state beforehand the purpose of such testimony in order that its admissibility may be determined. Leading questions need not be objected to unless the answer which they suggest is material to the case and objectionable to the opposing side. In merely formal or introductory matters leading questions are not only unobjectionable, but rather desirable, as calculated to save time by bringing the witness to the point at once.

Objections to questions need not ordinarily be made to the court in the first instance, but rather by a good-natured caution to the opposing counsel. If he persists in offending along the same line, direct appeal to the judge is in order.

THE LAW OF EVIDENCE

The rules as to what facts may be presented in evidence, how they may be presented, and their effect, constitute the law of evidence.

The general rule is that evidence, to be admissible in court, must be (1) relevant, that is, directly related to or connected with the "facts in issue" (see below); (2) competent, that is, the proper kind of evidence by which to prove any relevant fact alleged; and (3) material, that is, having a direct bearing and not raising collateral issues.

FACTS ADMISSIBLE IN EVIDENCE

Facts in issue.—In a criminal case whatever facts must necessarily be considered by the court in determining whether the accused is guilty are relevant, and evidence as to their existence or nonexistence may be introduced. Such facts are said to be "in issue." For instance, in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, the following facts are necessarily involved, that is, are "in issue," and may be proven: (1) that there was a *man-caused* fire at a certain time and place on the public domain, by which timber, underbrush, and grass were burned; (2) that this fire was set or caused to be set by the accused; and (3) that in doing this the accused acted willfully.

Facts relevant to the issue.—Facts not themselves directly in issue but which, being proved to the court, would establish conclusively the existence or nonexistence of the facts in issue, are called "facts relevant to the issue" and may always be given in evidence. This is circumstantial evidence. All facts so connected with a fact in issue as to form a part of the same transaction or subject matter (for instance, statements explaining an act and made simultaneously therewith); or as constituting a probable cause for it (as that the accused did or did not have any motive, or that he did or did not make any preparation for doing it); or as the natural effect of it (as where the subsequent conduct of the accused was such as to be apparently influenced by his having done the act); or as necessary to explain or introduce it, are admissible. Such facts are called in legal parlance "*res gestæ*."

When, however, facts offered do not furnish conclusive proof of the facts in issue, but merely render

their existence or nonexistence more or less probable, it is within the province of the judge to say whether they may be admitted. But the judge's discretion in this connection is subject to certain established rules, by which some classes of facts are always excluded.

Character, hearsay, opinion.—It is the general rule that character, hearsay, and opinions are irrelevant and not admissible, except in certain instances.

The fact of a person's having a good or bad character is not admissible in evidence as the ground for an inference that he did or did not do a certain thing, except that in criminal cases the accused may show that he has a good character as a fact from which the jury may infer that he is not guilty. When this fact of character is put in evidence by the accused, it may be contradicted like any other fact; and the prosecution may show that he has not a good character by proof that he has a bad one. The admission of this evidence in rebuttal is in accordance with the principle stated under "Production and effect of evidence."

Hearsay is commonly held not to constitute evidence because (1) it has not been made under the moral obligation of an oath, with the liability to criminal prosecution in case of falsehood; (2) the accused has had no opportunity of cross-examining the original witness in order to elicit his sources of information, as well as any facts which he may not care to disclose, and to test the general accuracy of his statements, and to show whether he has any bias; and (3) the original testimony has not been given in open court where the jury might observe the demeanor of the witness while giving it.

There are certain exceptions to the rule excluding hearsay, the most important of which, from our standpoint, are: (1) Where it is rendered necessary by the difficulty of other proof (for example, statements of a dying person); (2) where the circumstances under which hearsay statements are made furnish some guarantee of their reliability other than the fact of their having been made; (3) where such statements are in the nature of confessions or admissions (which may or may not constitute hearsay). An admission, in general, may be either (a) a direct statement of main facts in issue, or (b) a statement, or act, from which inferences may be drawn as to main facts in issue. A direct statement, in criminal cases, of complicity or guilt in respect to main facts

in issue is called a confession, and to be admissible it must be made voluntarily. No confession is considered voluntary if made under promise or threat from a person in authority. The term "admission" is usually restricted to involuntary statements, or acts (implied admissions), from which inferences can be drawn as to main facts in issue, and these are in the nature of circumstantial evidence. Statements which constitute confessions or admissions must be proved in the ordinary way by the introduction of testimony, oral or written, as to the language constituting the admission; and where they are also in the nature of hearsay, the precautions previously noted should be observed.

Opinion is usually not admissible in evidence, except by an expert duly qualified as such. Such qualification is established in the direct examination, simply by asking the witness whether he has had experience in the matter in question (as in tracking, for example), how much experience, over how many years, etc. This may be done immediately after the opening questions as to name, residence, occupation, if the testimony involving opinion is then desired; otherwise, whenever the point in his testimony is reached where it is desired to introduce the latter. The questions designed to bring out the testimony of opinion can then be proceeded with. It is not necessary to make any formal statement of intention to qualify the witness as an expert. If the qualification as an expert has inadvertently been omitted, opposing counsel will doubtless object as soon as questions involving opinion are introduced, whereupon the qualification as an expert can be made, and the evidence in question admitted by the court if the qualification be deemed sufficient by him.

KINDS OF PROOF BY WHICH FACTS IN ISSUE MAY BE ESTABLISHED

Facts regularly proven.—It is the general rule that courts in deciding issues of fact will consider only such evidence as may have been presented by the respective parties and will entirely disregard all facts not regularly proven. To this rule there are two exceptions, the first being as to certain facts of which the courts take "judicial notice," or recognize as within their own knowledge without requiring any proof thereof, the second being as to such facts as are formally admitted by both sides. The latter

class is not of so much importance in criminal cases as in civil actions, where a mutual agreement on such points may materially reduce the ground necessary to be covered by proof.

Primary and secondary evidence.—Ordinarily the most natural and satisfactory method of proving the existence or nonexistence of any fact is by the direct oral testimony of witnesses; but to this there are certain exceptions. Oral evidence may not ordinarily be given of any transaction of a public nature of which the law requires a record to be kept. For example, judicial proceedings must be proved from the records of the court and not by the oral testimony of persons who were present at the trial. The contents of a written instrument ordinarily can only be proved by production of the document itself. The terms of a contract or grant which the parties have reduced to writing and which it is sought to prove by one of the parties must be proved by production of the document itself, except in certain cases. The general rule is that all facts must be proved by the best kind of evidence obtainable, called “primary evidence”; but under certain specified circumstances the proof of the contents of writings is permitted—as when the original has been destroyed—by means of copies, oral testimony; etc., called “secondary evidence.”

Along with oral testimony there may also be produced in evidence and identified by the witnesses various things other than documents which it is desired to have the jury inspect. Such documents and objects are designated as “exhibits.”

PRODUCTION AND EFFECT OF EVIDENCE

As to parties by whom proof must be produced, it is obvious that the suitor who relies upon certain facts should be called upon to prove them. The general rule is that the burden of proof is upon the party who asserts the affirmative of the issue. In a criminal proceeding the burden of proof is upon the prosecution, which, in order to obtain a conviction, must prove the guilt of the accused beyond a reasonable doubt. The prosecution must produce its evidence first, and must exhaust its evidence in the first instance; that is, the prosecution may not first rely upon a *prima facie* case and, after that has been shaken by the proof offered by the accused, call other evidence to confirm it. After the accused has concluded his proof the prosecution can bring in further

evidence only for the purpose of contradicting the affirmative facts brought into the case by the accused, and may not attempt to prove his guilt by evidence of a state of facts different from that offered in the first instance.

Thus, if in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, evidence be offered that the accused set certain lenses designed to concentrate the rays of the sun on a bunch of matches surrounded by inflammable material, and that thereafter the fire occurred; and should the accused then offer evidence to the effect that the so-called lenses were defective and would not concentrate the rays of the sun, the prosecution could attempt to contradict this evidence of the accused, but could not offer evidence tending to show that the accused, after observing the failure of the lenses, returned and started the fire with a torch.

COMPETENCY OF WITNESSES

All persons offered as witnesses are presumed to be competent to testify until the contrary is shown to the satisfaction of the court. Objection to the competency of a witness must be made before his examination in chief if the disqualification is then known to the party objecting, or, if it is not then known, the objection must be made as soon as the disqualification appears. A witness may be incompetent owing to lack of mental capacity arising from extreme youth, disease, intoxication, or other cause. The defendant in a criminal case is a competent witness in his own behalf, but can not be compelled to testify. A lawyer is not permitted, except with his client's express consent, to testify as to any confidential communication made to him by or on behalf of his client during the course and for the purpose of his employment. Husband and wife are not permitted to disclose confidential communications made to each other during marriage, even if the marriage has since been terminated by divorce or the death of one of the parties. Under the California law neither the husband nor the wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases involving violence upon one by the other and those involving failure to support the wife or child.

APPENDIX A

EQUIPMENT

Speed in get-away will often be as essential in the criminal detection work as in fire suppression. Complete equipment should be kept in a carrying case reserved for this purpose. The only way to insure its completeness is to look over and replenish equipment *when you return* from a case, and not leave it until you want to start again. Have a list of what should be there pasted on the inside flap of the case.

Equipment should include:

Law enforcement manual.

Fish and game laws pamphlet.

Notebook (common red bound form 289), pencils (one hard drawing), fountain pen if available, writing paper, and a few envelopes, forms (expense, etc.).

Maps (general location), and square-ruled paper for making local sketches.

Compass (F. S., or else box and Abney level), pocket steel tape or light rule.

The above, except for the fountain pen, may be obtained on requisition through the supervisor.

Fingerprint powders and containers, camel's-hair brush, atomizer spray and shellac solution, plaster of Paris and water glass if desired. These may be either obtained locally, price to be included in reimbursement accounts, or they will be purchased in San Francisco upon request. Except when otherwise requisitioned, the fingerprint powders furnished will be dragon's blood for light surfaces and talcum powder for dark surfaces, together with shellac solution and atomizer for fixing the nonsetting powders. A leather case with compartments for the fingerprint bottles is convenient, but not necessary, and can not be officially furnished. Bottles will be furnished on requisition, of such size as to fit in a tobacco can which can be lined with flannel at home.

Cleaned gloves for fingerprint work.

Camera and tripod are often of very great value. They should be included in the equipment when they are available. Films used for privately owned cameras in official work may be purchased officially. (See supervisor for procedure.) In order that reimbursement may be made in the event of damage to privately owned cameras used in official work, application should

be made through the supervisor for a contract of hire by the Forest Service.

The attachment called Universal clamp and tripod head, which permits attachment of a camera to boards or other supports at any angle, will be furnished on requisition for official use.

APPENDIX B

FEDERAL COURTS AND UNITED STATES COMMISSIONERS

The State of California is divided into Federal judicial districts as follows:

NORTHERN DISTRICT

Commissioners in this district are located at Alturas, Dorris, Marysville, Red Bluff, San Francisco, Monterey, Stockton, Eureka, Covelo, Hollister, Jackson, Sacramento, and Willits.

Divisions.—For Federal court purposes the northern district is divided into:

Northern division.—Comprising the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, Eldorado, San Joaquin, Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono.

Court is held at Sacramento second Monday in April and first Monday in October, and at Eureka third Monday in July.

Southern division.—Comprising the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito.

Court is held at San Francisco first Monday in March, second Monday in July, and first Monday in November.

SOUTHERN DISTRICT

Commissioners in this district are located at Riverside, San Diego, Fresno, Bakersfield, Los Angeles, San Bernardino, Fresno, and El Centro.

Divisions.—For Federal court purposes the southern division is divided into:

Northern Division.—Comprising the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare.

Court is held at Fresno, first Monday in May and second Monday in November.

Southern Division.—Comprising the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

Court is held at Los Angeles, second Monday in January and second Monday in July; and at San Diego, second Monday in March and second Monday in September.

APPENDIX C

FORM OF LEGAL PROCESSES

It is well for the forest officer to be familiar with the proper forms of the legal processes with which he will have to do. Warrants, subpœnas, etc., however, will be prepared by the issuing magistrate and the forest officer will have no direct responsibility for their form; he will only need to be sure that they properly state the facts of the case, which he must properly have stated in his complaint (see p. 58). The correctness of the latter only his knowledge and care can insure, and he must therefore be thoroughly familiar with its requirements. On any doubtful points, especially of form, the magistrate will doubtless be glad to give him assistance; but he should not be entirely dependent on such help.

Complaint.—The following is an accepted form. The letters (a), (b), etc., inserted in the blank spaces refer to illustrative wordings for different kinds of cases, following. These, however, should not be followed verbatim unless they fit the individual case; every case should be stated on its own merits.

IN THE JUSTICE'S COURT

of

TOWNSHIP, COUNTY OF

STATE OF CALIFORNIA

The People of the State of California

Plaintiff

vs.

Defendant

Complaint-Criminal

P. C. Secs. 806, 809, 1425

Personally appeared before me, this _____ day of _____ 19_____, _____ of _____ in the County of _____ State of

California, who, first being sworn, complains and says:

That _____ (a) _____ (b) _____ of _____ on the _____ day of _____ 19_____, and before the filing of this complaint, at _____ in the said County of _____ State of California, (c) _____ (d) _____ (e) _____ (f) _____

all of which is contrary to the statute in such cases made and provided, and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant may be issued for arrest of the said _____ and that _____ he _____ may be dealt with according to law.

Subscribed and sworn to before me this _____ day of _____, 19_____

Justice of the Peace of said Township.

Illustrative wordings—

(a) John Doe of Peanut, California,

(b) John Doe of Peanut, California, and Richard Roe of Milpitas, California.

(c) Did in violation of subsection 1 of section 384 of the Penal Code of the State of California set fire, or cause or procure fire to be set, to forest, brush, and other inflammable vegetation growing on lands not his own without the permission of the owner of such lands, to wit: the SE. SE. section 2, T. 23 N, R. 11 W., M. D. M.

(d) Did in violation of subsection 2 of section 384 of the Penal Code of the State of California allow a fire to escape from his control, he having charge thereof, and spread to lands not his own, to wit: the SE. SE. section 2, T. 23 N., R. 11 W., M. D. M., without using every reasonable and proper precaution to prevent such fire from escaping, whereby timber, brush, and other inflammable vegetation on said lands was burned.

(e) Did in violation of subsection 3 of section 384 of the Penal Code of the State of California burn brush, logs, fallen timber, and grass on his own land without

taking every proper and reasonable precaution to prevent the escape of the fire, whereby said fire did escape and spread to the lands of another, and did burn timber, brush, and other inflammable vegetation on such lands.

(f) Did in violation of subsection 4 of section 384 of the Penal Code of the State of California leave a fire burning and unextinguished upon departing from a camp or camping place in the SE. section 2, T. 23 N., R. 11 W., M. D. M.

Affidavits.—A complete and satisfactory form is as follows:

STATE OF CALIFORNIA,

County of _____ ss.

John Doe, of _____ being first duly sworn,
deposes and says:

Signed _____
(Affiant.)

Subscribed and sworn to before me at _____
this _____ day of _____ 19____

Forest Ranger.

If the statement to which affidavit is desired has already been written, or if it seems undesirable, on account of the effect on the witness, to begin the written statement with the formality of an affidavit (see p. 55), the form of oath only, following the signature of the affiant, will be sufficient.

APPENDIX D

OUTLINE FOR LAW ENFORCEMENT INVESTIGATION REPORT TO DISTRICT FORESTER

(See p 60)

1. Trespass case designation (or fire, etc., if case not carried to trespass status).

2. Name of trespasser (unless given in designation), and address.

3. Is trespasser a forest user; if so, how?

4. Nature of trespass; location; size of area (e. g. in fire); date (unless given in designation).

5. (a) Was it prosecuted; under what statute; where tried; when; result of trial. (b) If not tried, what disposition was made of case?

6. Name of investigating officer (and assistants, if any), dates investigation commenced and closed.

7. Brief summary of evidence against suspect or defendant.

8. Suggestions for publicity on this case; and for action respecting justice, or other officer, if any. (See p. —.)

9. Personal description of trespasser (in cases of conviction; or of aggravate malice, when not convicted): (*a*) Age; (*b*) height; (*c*) weight; (*d*) eyes; (*e*) hair; (*f*) any other peculiarities aiding in identification; (*g*) occupation; (*h*) habits (especially if peculiar and having bearing on identification or apprehension); (*i*) general reputation; (*j*) associates; (*k*) additional remarks.

10. (*a*) Signature of reporting officer; (*b*) place and date of report.

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